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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
HONORABLE OTIS D. WRIGHT, II  
UNITED STATES DISTRICT JUDGE PRESIDING  
PATRICIA STEWART, D.O., )  
 )  
Plaintiff, )  
 ) ED CV 13-1670-ODW(DTBx)  
vs. )  
 )  
AMERICAN ASSOCIATION OF PHYSICIAN ) VOLUME 2  
SPECIALISTS, INC., WILLIAM )  
CARBONE; ROBERT CERRATO; SVETLANA ) PAGES 1 - 173  
RUBAKOVIC and DOES 1-100, )  
 )  
Defendants. )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF  
TRIAL - DAY 2  
WEDNESDAY, JANUARY 27, 2016  
8:06 A.M.  
LOS ANGELES, CALIFORNIA

\_\_\_\_\_  
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A P P E A R A N C E S (continued)

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NO.	DESCRIPTION	FOR	FOR	
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1 LOS ANGELES, CALIFORNIA; WEDNESDAY, JANUARY 27, 2016

2 8:06 a.m.

3 -oOo-

4 (Call to Order of the Court.)

5 (Open court in the presence of the jury.)

6 THE COURT: All right. The record will reflect all  
7 counsel and the parties are present, as is the jury.

8 All right. Ladies and gentlemen -- what? I'm sorry. Go  
9 on.

10 THE COURTROOM DEPUTY: Calling Item 1,  
11 ED CV 13-1670, Patricia Stewart versus American Association of  
12 Physician Specialists, et al.

13 Counsel, may I have your appearances, please.

14 MR. SCHNEIDER: Eric Schneider, Leila Rossetti, and  
15 Marlen Kruzhkov for the defendants.

16 THE COURT: Good morning, counsel.

17 MS. HILAIRE: Good morning, your Honor.

18 Mika Hilaire and Don Conwell, who's using the restroom at  
19 the moment, on behalf of the plaintiff.

20 THE COURT: All right. Ladies and gentlemen, we'll  
21 proceed in the following way: First, each side may make an  
22 opening statement. Now, an opening statement is not evidence.  
23 It is simply an outline to help you understand what that party  
24 expects the evidence will show. Now, a party is not required  
25 to make an opening statement.

1           The plaintiff will then present evidence and counsel for  
2           the defendant may cross-examine.

3           Then the defendant may present evidence and counsel for  
4           the plaintiff may cross-examine.

5           After all of the evidence has been presented, I will then  
6           instruct you on the law that applies to the case and the  
7           attorneys will make their closing arguments.

8           After that, you will go to the jury room to deliberate on  
9           your verdict.

10          We will now begin with the opening statement, beginning  
11          with the party who bears the burden of proof, the plaintiff.

12                 MR. SCHNEIDER: Your Honor, before we begin, may we  
13          request that nonparty witnesses be excluded from the courtroom?

14                 THE COURT: Even during the opening statements?

15                 MR. SCHNEIDER: Yes.

16                 THE COURT: Okay. Anyone expected to be a witness  
17          in this case is excluded from the courtroom until after you  
18          have testified.

19                 MR. CONWELL: May I proceed, your Honor?

20                 THE COURT: Yes, please. Thank you.

21                 MR. CONWELL: Your Honor, during my opening, I  
22          wanted to use the flip chart to just write a couple things  
23          down. Is that permissible for the Court?

24                 THE COURT: Whatever you wish.

25                 MR. CONWELL: Thank you, your Honor.



1 THE COURT: Wait a minute. Whatever it is that you  
2 plan today, have you shown that --

3 MR. CONWELL: Just going to --

4 THE COURT: Okay. Go ahead.

5 MR. CONWELL: Thank you, your Honor.

6 **OPENING STATEMENT BY MR. CONWELL**

7 MR. CONWELL: Good morning. My name is Don Conwell,  
8 and with Mika Hilaire, we represent the plaintiff, Dr. Patricia  
9 Stewart, in her lawsuit against the American Association of  
10 Physician Specialists. During the trial, we'll be referring to  
11 them as AAPS.

12 This case is about what AAPS did to Dr. Stewart that  
13 essentially ruined her medical career. And during the course  
14 of the trial, we're going to be presenting evidence to you to  
15 show you what they did and how they did it.

16 But first, I'd like to talk about how Dr. Stewart and AAPS came  
17 to be involved with one another. Dr. Stewart is a  
18 dermatologist in Santa Barbara, California, and she's been  
19 practicing for over 20 years. For most of her career she's  
20 been a member of the AAPS. She, upon completion of her medical  
21 school, did an internship or a residency that was an AAPS  
22 residency. And not long after completing her residency, she  
23 took examinations and went through peer review and she obtained  
24 what's called board certification from the AAPS.

25 Now, the AAPS is a national board-certifying organization.

1 What they do, they're permitted by certain states, though not  
2 all states, to administer exams to doctors, and then the  
3 doctors who pass the exams and go through peer review are given  
4 board certification in an area of specialty. There are various  
5 kinds of specialty. There's surgery, there's dermatology,  
6 internal medicine, this sort of thing. And you may have seen  
7 your doctor's office, they'll have certificates on their wall  
8 that talk about what kind of certification they have.  
9 The certification as a board-certified specialist is extremely  
10 important to a doctor. Membership in a professional  
11 association and board certification are really essential to  
12 surviving as a doctor in today's medical business environment.  
13 Doctors cannot obtain or retain, for the most part, a contract  
14 with an insurance company, they can't attain a preferred  
15 provider contract, they can't join medical groups, they can't  
16 obtain hospital privileges without board certification. So  
17 that's one piece.  
18 The other piece, they have to be in good standing with the  
19 board-certifying organization. So that's going to be important  
20 as we move along in the trial and you see what happened with  
21 Dr. Stewart.  
22 To obtain those contracts, the doctor has to go through  
23 something called credentialing, and credentialing is a process  
24 whereby a doctor fills out an application that describes the  
25 doctor's qualification, including board certification, and

1 including whether or not they are a member in good standing.  
2 There's actually a question on most of these questionnaires  
3 that asks, "Have you ever been disciplined by your professional  
4 association?" That is an extremely important issue in the  
5 business of medicine. If you've been disciplined and you have  
6 to check the box, you're probably not going to pass  
7 certification.  
8 The more severe the discipline, the less likely it is that  
9 you're going to get credentialed. And if you're not  
10 credentialed, then you're not going to get the contracts,  
11 you're not going to retain the contracts that you need, really,  
12 to survive. And now I'm sure there are exceptions, but for  
13 most doctors in today's business environment, these are  
14 essential.  
15 Why is this so important to a doctor that they not have a black  
16 mark on their record, that they have -- that they're able to  
17 answer that they're in good standing with their professional  
18 association? Well, in today's legal environment, insurance  
19 companies, other businesses in the medical field that are faced  
20 with litigation -- because their medical malpractice is a major  
21 issue in the medical industry -- if they're faced with  
22 litigation, they've got to make sure that the people they're  
23 contracting with, their preferred providers, have a totally  
24 clean record. So this is very, very important to a doctor that  
25 they not have any blemish on their record. Companies, frankly,

1 just are not willing to take risk.

2 And so why am I telling you all this? Well, on June 13, 2011,

3 the unthinkable happened to Dr. Stewart. She was expelled from

4 the AAPS, that organization that certified her that she'd been

5 a member of for over 20 years, for conduct that was, quote,

6 "injurious to the organization and its purposes."

7 Expulsion from the organization is the most severe sanction

8 that was possible. And by doing this, AAPS put a scarlet

9 letter on Dr. Stewart that she bears the rest of her life

10 because the expulsion specifies that it's permanent. And

11 because she went through a residency with AAPS, she doesn't

12 have another certifying organization to go to. So this is a

13 lifelong expulsion for Dr. Stewart and something that she has

14 to check on the box, Yes, I've been disciplined and it's been

15 expulsion.

16 When you hear that, you've got to be asking yourself why. What

17 did she do to deserve this? She must have done something

18 wrong. And the answer is and the evidence is going to show she

19 didn't do anything wrong. What she did is something right.

20 What she did was she spoke up about misconduct and corruption

21 in the leadership of AAPS. She had a duty, she felt, to do

22 that not only as the member who'd pledged herself under AAPS

23 rules to abide by the highest ethical standards, but also as a

24 governor in the Academy of Dermatology, someone who'd been

25 elected by her peers to represent them in leadership. And she

1 had a duty to speak up about misconduct.

2 You're going to hear how certain leaders in the AAPS were

3 engaged in unethical and sometimes unlawful conduct that they

4 tried to cover up, including, as you might have guessed,

5 disseminating or receiving and redistributing pornography in

6 the workplace on workplace computers. And these are medical --

7 medical doctors doing this.

8 And this was brought to light in 2010 by Dr. Tom Castillo.

9 Dr. Castillo is a former president of the AAPS, and former AAPS

10 staff employees contacted him and told him about things that

11 were going on at the AAPS, and he called for an investigation.

12 Now, 2011, 2012 -- if I may, just going to write three names on

13 the Board. These issues of misconduct involve three people:

14 Mr. Carbone, Dr. Cerrato, and Dr. Stephen Montes.

15 So those are three very important names because they're --

16 throughout this case you're going to hear about these doctors

17 and what they did that led to Dr. Castillo calling for an

18 investigation.

19 Dr. Cerrato is a doctor and a lawyer. He was on the Board of

20 Directors for many years and held offices in leadership. He

21 was the AAPS president for two terms.

22 Dr. Montes was a doctor, served as the treasurer of what's

23 called the AAPS Foundation, a chair of the continuing medical

24 education committee, and was a permanent member of the Board of

25 Directors. He's also a former president of the AAPS.

1 And the third person is Bill Carbone. Bill Carbone is the CEO  
2 of AAPS. He works full time for the AAPS managing the staff at  
3 the time relevant here of about 15 people at a salary of over  
4 \$260,000 per year plus a lot of perks.  
5 Over the years, the evidence is going to show, he developed a  
6 good ol' boy network among doctors in that organization and  
7 placed them in positions of leadership, people who became very  
8 loyal to him. But Carbone, Dr. Cerrato, and Dr. Montes are --  
9 really have been the power group at AAPS.  
10 I'm going to talk more about what the misconduct was in just a  
11 minute, but first I'd like to tell you what our three claims  
12 are. There's a claim for breach of contract. That's the first  
13 claim that's going to be decided in the case. And the law is  
14 that a bylaw of an organization is considered to be a contract  
15 between the member and the organization. So if you violate the  
16 bylaws, then you violated a contract with the member of the  
17 organization.  
18 So Dr. Stewart has got a claim for breach of the contract of  
19 the bylaws with AAPS, and the reason is because AAPS did not  
20 follow its own bylaws in the way they terminated her. There  
21 was no due process, and the law is that she can only be  
22 terminated by procedures that are fair, that are reasonable,  
23 and not carried out in good faith.  
24 I'm going to write that down because I want everybody to keep  
25 that in mind.

1 MR. SCHNEIDER: Your Honor, could the board be  
2 turned so the defense can see it?

3 THE COURT: This isn't going to work. Counsel?

4 MR. CONWELL: Yes, your Honor.

5 THE COURT: You've got other equipment in here that  
6 will enable you to write whatever you want so that the jury can  
7 see it and so can everybody else in the courtroom. This isn't  
8 going to work when defense counsel can't see a thing that  
9 you're writing. All right?

10 MR. CONWELL: Yes, your Honor.

11 THE COURT: So you can remove your easel, you can  
12 just grab some paper, put it on the document cam. Write on it  
13 to your heart's content and everybody in the room will be able  
14 to see it.

15 MR. CONWELL: Okay.

16 THE COURT: One other thing. Remember who's going  
17 to provide the instruction on the law.

18 MR. CONWELL: Yes.

19 So we're going to show that Dr. Stewart was terminated  
20 because she was a woman who spoke up about misconduct and  
21 corruption in the AAPS, and that the AAPS disciplinary  
22 proceedings were a sham that was set up from the start to expel  
23 her from the AAPS rather than to investigate whether or not  
24 she'd engaged in any misconduct or done anything to harm AAPS.

25 The second claim is for gender discrimination. And the

1 evidence is going to show that the leadership of AAPS is really  
2 a good ol' boy network, that the two women in the organization  
3 who spoke up about corruption and misconduct, they alone were  
4 expelled from the organization even though other men were also  
5 involved in speaking up. The AAPS expelled the two women. No  
6 men were expelled or even disciplined. You're going to hear  
7 about other instances of discrimination.

8 Third, she sued for fraud. And the fraud claim is based  
9 upon a misrepresentation to Dr. Stewart that the AAPS was a  
10 highly ethical organization. In fact, it tries to distinguish  
11 itself from the other certifying organizations as the only one  
12 that requires its members to pledge to the highest ethical  
13 standards, when in fact it was the lack of ethics that led to  
14 her expulsion.

15 And then there's a claim that's part of the fraud claim  
16 called a false promise. You can hear evidence about the AAPS  
17 president promising her a right to an appeal after they  
18 expelled her from the organization, but they never gave her the  
19 appeal. To this day she's not been given that appeal of some  
20 three-and-a-half years later, and it's a promise that they  
21 never intended to keep when they made it.

22 So let's go back to 2010, what Dr. Castillo learned.  
23 Dr. Castillo, as I said, is a former president of the AAPS, and  
24 in 2010 he was on the Board of Directors of AAPS, and in the  
25 Executive -- on the Executive Committee. And Dr. Castillo with



1 two other doctors, a Dr. Geller and a Dr. Klein, all of whom  
2 were involved in leadership at the AAPS, received information  
3 about misconduct by Drs. Cerrato, Montes, and Carbone. So  
4 Dr. Castillo went to the president-elect, David McCann, and he  
5 reported this misconduct to Mr. McCann and said, "As a member  
6 of the Board of Directors, I feel like we have a fiduciary duty  
7 to our members and to the Association to conduct an  
8 investigation."

9 So what were the issues of misconduct that were alleged by  
10 Dr. Castillo? So the first one was that there was -- are you  
11 able to show that? So the first one was that there was a  
12 distribution of pornography by Bill Carbone. And he had  
13 received a report from Timothy Bell, a former employee of the  
14 AAPS. He was the Director of Governmental Affairs for the  
15 AAPS.

16 If you can just let me -- so apparently we're having a  
17 technical issue.

18 THE COURTROOM DEPUTY: I was going to say can he  
19 connect and it'll come up there. Push that button.

20 THE COURT: Push the button on the console that says  
21 "Plaintiffs."

22 MR. SCHINNAR: Maybe we can use a different --  
23 there's something not going through.

24 THE COURTROOM DEPUTY: Push plaintiff button.

25 MR. CONWELL: It's illuminated. The plaintiff

1 button is illuminated.

2 THE COURT: Okay.

3 (Brief pause in the proceedings.)

4 MR. CONWELL: We're just going to continue. Okay.

5 The first instance of misconduct was that Bill Carbone was  
6 receiving pornography from members of the Board of Directors  
7 and other doctors. He was receiving it on the work computer  
8 and he was exposing staff to the pornographic images, and these  
9 are, staff has reported, triple X-rated group orgies, full  
10 frontal nudity focussed on, you know, female vaginas, crude  
11 jokes, and humor as part of all this, and he was then  
12 distributing it to staff.

13 The second issue was that he was doing the same thing with  
14 e-mails that were racially slanderous, that made fun of blacks,  
15 Hispanics, Asians, American Indians, just all these different  
16 races, and he was receiving those and he was also disseminating  
17 those to others in the AAPS.

18 These were very, very serious issues for the organization  
19 because AAPS has got to get approved by states to do this board  
20 certifying that I talked to you about earlier, and so their  
21 reputation has got to be impeccable. And Dr. Castillo is a  
22 long-term member and former president who was extremely  
23 concerned about these charges and wanted an investigation.

24 Next, there was questions regarding the federal election  
25 commission and whether or not there were violations of campaign

1 contributions. And so the Federal Election Commission has  
2 rules and so forth regarding reporting income and regarding who  
3 can make contributions. So there are questions raised about  
4 that.

5       There were questions raised about the continuing medical  
6 education and whether or not the organization was complying  
7 with the ACCME's rules for continuing medical education. And  
8 then there was even an allegation that the company whose  
9 business it was to provide continuing medical education had  
10 been put on probation and that this had not been disclosed.

11       And then there was a charge regarding the -- excuse me --  
12 the unlawful compensation of AAPS leaders. Dr. Bob Cerrato,  
13 who's also a lawyer, was providing volunteer services, but it  
14 was reported that he was getting paid for those services and  
15 also that he was involved in the unlicensed practice of law.  
16 And as a person in leadership, if in fact he was involved in  
17 the unlicensed practice of law providing legal services to AAPS  
18 in Florida which is where it's headquartered and he was not a  
19 Florida attorney, that would be quite a problem for the AAPS.

20       So Dr. Castillo went to Dr. McCann with this and said, "We  
21 need to do an investigation." What happened was Dr. McCann  
22 then went to Mr. Carbone with this information. And  
23 Mr. Carbone, Mr. Cerrato, and Mr. Montes began a cover-up. And  
24 what they did is they decided to go on the offense and the  
25 first thing they did is they removed Dr. Castillo and

1 Dr. Geller from the Board of Directors. And then they  
2 suspended them for up to six months and they sent them a notice  
3 saying, "You're suspended from the organization for up to six  
4 months. You can't participate in any activities. You can't  
5 hold yourself out as a holder of any our privileges, including  
6 certification, while we conduct an investigation."

7 So the one who called for an investigation of  
8 misconduct now has been suspended. Castillo, Geller, and  
9 Klein, all who were raising these questions, were all suspended  
10 by the leadership.

11 And so they work behind the scenes now to really demonize  
12 Drs. Castillo, Geller, and Klein. They say they're doing an  
13 investigation, but, in fact, no investigation ever occurs. In  
14 fact, AAPPS denies all of these allegations, says they're all  
15 false, and they file a lawsuit against Timothy Bell, the former  
16 government affairs official who was reporting some of this to  
17 Dr. Castillo.

18 And in that lawsuit, Dr. -- Mr. Bell had now moved out of  
19 state and didn't even defend, and they obtained a judgment  
20 against him because he didn't defend, and then they used that  
21 as part of an e-mail propaganda campaign and said, "We've --  
22 we've had a trial," or, "We've had an adjudication that  
23 Mr. Bell is guilty and now we're going after his  
24 co-conspirators, Drs. Castillo, Geller, and Klein."

25 So Drs. Castillo, Geller, and Klein then hired a lawyer,

1 hired me to file a lawsuit against the AAPS to clear their name  
2 and to have these suspensions removed. So we filed a lawsuit  
3 in Florida against the AAPS seeking restoration of their  
4 membership in the AAPS and have them restored to the Board.

5 Meanwhile, Mr. Carbone prepares a memorandum to the  
6 bylaws -- and you're going to hear a lot about this amendment  
7 to the bylaws -- whereby he attempts to create these super  
8 powers in just a handful of people, this control group at the  
9 AAPS, so that they can just get rid of anyone who would expose  
10 misconduct in leadership. And he -- he puts this on the agenda  
11 for the next meeting of the AAPS in June of 2011.

12 Meanwhile, a gentleman who you're going to hear from,  
13 Dr. Atwood Rice, is put -- comes in and he is now contacting  
14 Dr. Castillo regarding what had happened to Dr. Castillo, and  
15 he was very concerned about this. Dr. Castillo explained about  
16 the misconduct that he'd heard about that he'd called for an  
17 investigation and instead he was suspended.

18 Dr. Rice then is told not by Dr. Castillo, but by another  
19 person in the AAPS, "Who can I contact about what's happened to  
20 Castillo, Geller, and Klein? And who can I talk to about this  
21 new amendment that the -- this control group is trying to get  
22 passed at the AAPS that gives them these unfettered powers to  
23 get rid of anyone who speaks up regarding corruption within the  
24 organization?" And he's referred to Dr. Patricia Stewart. So  
25 this is the first time she's involved in any of this.

1           And Dr. Rice contacts Dr. Stewart in March or April of  
2   2011 and says, "I've heard these things about Drs. Castillo,  
3   Geller, and Klein. I heard about this new amendment. Have you  
4   heard about it?" And he's the one who tells her and she hears  
5   this now from Dr. Rice.

6           And he said, "You're a governor in the Dermatology  
7   Academy. Can you speak out at the next meeting against this  
8   amendment? And also can you speak out about what's happened to  
9   Castillo, Geller, and Klein? We can't allow this in our  
10   organization." So she says that she'll do so.

11          Dr. Rice also speaks to her husband, who's also a doctor  
12   and he's a lawyer. His name is Dr. William Okerblom. And he  
13   asks Dr. William Okerblom if he would help Dr. Rice and some  
14   other concerned doctors to get ready for this next meeting.  
15   And so Dr. Okerblom agrees to do that.

16          In June of 2011 they have their annual meeting. Every  
17   June AAPS has an annual meeting at a hotel in a different city  
18   and the members come together and they take care of AAPS  
19   business and they have continuing medical education. So in  
20   2011 they did this at the Tysons Corner, Virginia. And at that  
21   meeting there was a big hot topic there and that was this new  
22   amendment. Dr. Okerblom has prepared something called a  
23   preliminary legal opinion, and in that preliminary legal  
24   opinion he talked about most of these issues about  
25   mismanagement by -- or misconduct by the management of AAPS.

1 And he talked about the pornography, and he, in fact, verified  
2 that this was all -- that these things were in fact true. He  
3 also talked about the -- this amendment that was being proposed  
4 to give the super power to this committee.

5 Dr. Stewart passed out a few copies of his preliminary  
6 legal opinion. She talked to members of the House of  
7 Delegates, primarily women that she knew, and she advocated  
8 against passing the amendment. And then she also said that the  
9 organization should settle the lawsuit with Castillo, Geller,  
10 and Klein and remove the suspension and restore them because  
11 what they had been charging was in fact the fact and that they  
12 could not tolerate that sort of conduct in the leadership of  
13 the AAPS. That's all that she does at that meeting.

14 Now, the two other things that are really important about  
15 that meeting you're going to hear about, one is that  
16 Dr. Stewart is accosted by Dr. -- by two people. Dr. Herbert  
17 Pardell, he's a member of the Board of Directors, and as we  
18 later learned one of the people that was involved in this  
19 pornography exchange with the CEO William Okerblom. And  
20 Dr. Pardell came up with this preliminary legal opinion,  
21 beating her basically on her chest area and saying, "Why are  
22 you doing this? This is all false. This is all false. None  
23 of it's true." Of course, he knew at the time that he was  
24 going to be, if this investigation went forward -- people would  
25 discover his involvement in distributing these e-mails within

1 the organization.

2 Another thing that happened was Mr. Carbone came up and  
3 verbally accosted her in front of all of her professional  
4 colleagues and told her, you know, "What are you doing?" You  
5 know, "I'm" -- basically saying he's going to get her for  
6 this -- for this preliminary legal opinion going out to the  
7 other members.

8 That was very traumatizing for Dr. Stewart and she had  
9 decided at that point, It's not worth it; I'm just going to  
10 back off, and that's what she did.

11 Now, Dr. Rice and there's other doctors, Dr. Lemonick and  
12 other physicians you'll hear about, still were opposed to this  
13 amendment and still wanted something done to restore Castillo,  
14 Geller, and Klein. So they wrote a letter with  
15 Dr. Okerblom to the AAPS in December of 2018[sic], and in the  
16 letter they urged again that the amendment not be passed and  
17 explained also that the allegations of the -- that Dr. Castillo  
18 had made had been proven to be true. And that amendment then  
19 failed again. So each of these times someone's speaking up.  
20 It's in the political process at AAPS.

21 Meanwhile, the court in Florida had ruled in favor  
22 of Castillo, Geller, and Klein, said they were unlawfully  
23 suspended and restored their membership. However, that lawsuit  
24 didn't end because they had other claims at this point against  
25 the AAPS and AAPS had countersued against them.



1           So the next time that's important here on our timeline is  
2           January of 2012. January in 2012 there's a Dermatology Academy  
3           meeting and this takes place by telephone. You'll find that  
4           most of the business of AAPS is conducted by telephone because  
5           the doctors are all over the country, and when they meet, they  
6           just have conference calls.

7           Dr. Stewart had received a call from another female doctor  
8           saying that she had been discriminated against by Mr. Carbone,  
9           and she'll explain to you what this doctor said to her, but it  
10          caused great concern to Dr. Stewart because she'd seen this  
11          discrimination in the organization before against women. And  
12          she was very concerned about what was happening to her  
13          organization that she'd been a part of for so long.

14          And so during that telephone conference, she made a couple  
15          of motions. One of the motions was a motion to apologize to  
16          Castillo, Geller, and Klein. That's all she did. She said,  
17          "We need to make a public statement here and apologize to  
18          them."

19          And secondly, she said, "We need to call for Dr. Cerrato  
20          to step down as president" -- and so he at that point was the  
21          president of the AAPS -- because of his part in what he did  
22          with Drs. Castillo, Geller, and Klein and because of the  
23          concerns that he was getting paid for his volunteer work at the  
24          AAPS.

25          So what happens after that? Immediately this power

1 group -- oh, thank you -- immediately this power group, again  
2 they go on the offense, just like they did with Castillo,  
3 Geller, and Klein. Now they do with Dr. Stewart, and by May of  
4 2012 they had removed her as the governor of the Dermatology  
5 Academy. They orchestrated some things to give them an excuse  
6 to do this and they said, "You're now removed as the governor."

7 Then in March of 2012 or early April of 2012, they sued  
8 her and her husband in Florida saying that they were trying to  
9 injure the AAPS. They filed a lawsuit against her.

10 Then on May 8th of 2012, they send a document to her. Bob  
11 Cerrato sends this document to her and he says, "You are being  
12 disciplined by the AAPS. This is the ultimate hammer. You're  
13 being disciplined by AAPS. You are ordered that there's going  
14 to be a disciplinary hearing in Tampa on June 9th of 2012, for  
15 you to come in and defend yourself for engaging in conduct  
16 injurious to the best interests of the AAPS." And he attaches  
17 to that letter a -- the complaint that had been filed against  
18 her in Florida. Now, this complaint makes allegations that she  
19 had conspired with Drs. Castillo, Geller, and Klein to  
20 disseminate false information about the AAPS.

21 And the same letter told her, "You have 15 minutes for a  
22 hearing in Tampa" -- 2,000 miles from your home -- "to come in  
23 and defend yourself." It also said that, "You may submit  
24 evidence in writing to defend yourself."

25 So let me tell you what's been established at this point

1 regarding the allegations that I've shown you here of  
2 misconduct by AAPS. First, the -- it had been established  
3 that, in fact, the pornography had been distributed and  
4 disseminated at the AAPS headquarters by the president, by the  
5 CEO, Mr. Carbone, and this included a video, what's called the  
6 *Cheers* video. And the *Cheers* video, it's basically a group  
7 orgy that takes place in a bar with -- they show the *Cheers*  
8 sign from the TV show and they play this music during the orgy.

9 Other, you know, videos of this nature that were sent to  
10 Mr. Carbone by doctors on the Board of Directors, and this is  
11 particularly a concern for a couple of reasons. No. 1, these  
12 are doctors. These are people who for a living ask women to  
13 undress and men to undress. And these doctors are circulating  
14 this kind of material among themselves.

15 No. 2, this is all taking place in the workplace. This is  
16 on the workplace computers with Mr. Carbone. And then he  
17 exposes employees to this, including Cassandra Newby.  
18 Cassandra Newby at one point had been head of certifications  
19 for the AAPS, and she was exposed to these videos. In fact, he  
20 sent them to her on her computer.

21 The videos and the photographs are particularly degrading.  
22 One of them shows a woman urinating on a fire hydrant with her  
23 leg hiked up without any clothes and her undergarments as if  
24 she's a dog. They also show a nude woman in a hospital bed, as  
25 if this is okay to show this sort of thing with patients.

1 And --

2 MR. SCHNEIDER: Your Honor, we object. We have  
3 raised objections. These exhibits have not been admitted into  
4 evidence. The Court has not considered our objections at this  
5 point.

6 THE COURT: All right. My first question is -- and  
7 I thought I went over this -- did you clear with opposing  
8 counsel the exhibits that you intended to use during your  
9 opening statement?

10 MR. CONWELL: We sent these images to them.

11 THE COURT: All right.

12 MR. SCHNEIDER: Your Honor, they were not cleared  
13 that they were going to be shown now.

14 THE COURT: What I told you all was that unless  
15 you've got an objection with respect to the authenticity of any  
16 of the exhibits -- and do you?

17 MR. SCHNEIDER: The authenticity, no.

18 THE COURT: Okay. Relevance?

19 MR. SCHNEIDER: Uhm, no. It's not irrelevant. The  
20 objection that we made and submitted to the Court is that it's  
21 overly prejudicial under the totality of the circumstances of  
22 this case.

23 THE COURT: Got you. All right. Overruled.

24 MR. CONWELL: So -- so they're particularly  
25 degrading to women, not to say that pornography in general is

1 not. It all is. But then they showed a woman on a hospital  
2 bed -- not seeing it on the screen -- and -- and it says -- and  
3 this is from one of the doctors in AAPS. They sent it to Bill  
4 Carbone at Christmas time and it says, "Ho, ho, ho," and, you  
5 know, there's an intended play on words, but she's sitting on  
6 the hospital bed with her legs spread open and the camera  
7 focussed, you know, right in the middle.

8 And then there's -- there's a particular emphasis on  
9 teenage pornography. There's a -- there's a photograph of a  
10 young girl, obviously a teen, and it says, "Jailbait because  
11 the best things in life are illegal." These are doctors and  
12 this is their board-certifying organization.

13 Another one shows a teenage girl by school lockers and it  
14 says, quote, "Every male teacher considered the consequences,"  
15 clearly suggesting them getting involved in illegal sex acts  
16 with underaged females.

17 Another shows what appears to be three nude teenage girls  
18 playing the game of Twister, you know, where you spin a dial  
19 and you put your hands and feet on different places in the --  
20 and your bodies are in all sorts of weird positions. And of  
21 course it always focuses on their vagina and their breasts, and  
22 very young looking girls.

23 The AAPS handbook says that if you even have pornography  
24 on your computer, that's grounds for immediate termination, as  
25 you would expect. It also says that if this occurs, or you

1 hear about it occurring, you are to report it immediately to  
2 the CEO of the organization. But in this instance, it was the  
3 CEO of the organization who was the one receiving it and  
4 exposing Cassandra Newby to it, exposing Timothy Bell to it.  
5 You're going to hear them say, "Well, Mr. Bell wanted to see  
6 it," as if that makes it okay. But this is what they were  
7 doing.

8 So now Mr. Carbone also -- Mr. Carbone, by the way, now  
9 has admitted to all this. He didn't at first, but now he has.  
10 He's admitted to receiving and distributing the racially biased  
11 and degrading e-mails.

12 One shows a bunch of African-American doctors and nurses  
13 around a table and there is a white man on the table wearing a  
14 Ku Klux Klan outfit and it says, "I don't know about you, but I  
15 got a feeling it's not going to go too well for this guy."

16 Another one shows President Obama shining -- down on the  
17 ground shining Sarah Palin's shoes.

18 You know, jokes about Hispanics, just one after another.

19 Then on the sexual harassment claim that had been alleged  
20 to Dr. Castillo, that also -- there was evidence now to support  
21 that. Cassandra Newby had filed a complaint against the AAPS  
22 suing them for sexual harassment, a claim that they immediately  
23 came in and settled with her. And the complaint alleged that  
24 it was Bill Carbone who was sexually harassing her and  
25 discriminated against her, calling her horrendous names -- an

1 old cow, a cunt -- things like that. This is the kind of  
2 person, this is the kind of atmosphere that they created at  
3 AAPS.

4 The FEC issue, there was an conciliation agreement whereby  
5 AAPS agreed with the Federal Election Commission in the spring  
6 of 2011 they in fact had violated the laws. And Stephen Montes  
7 had violated the law, a claim that they originally had denied.

8 The ACCME probation, we uncovered the letter where ACCME  
9 put the AAPS on probation for providing medical continuing  
10 education.

11 We obtained records, financial records, showing that in  
12 2010 AAPS had paid Bob Cerrato, the president, who's supposed  
13 to be volunteering the services, \$40,000 for his providing  
14 legal advice to the AAPS.

15 So, you know, all these things are established. But as I  
16 said, they make these claims now and they turn all this into an  
17 offense against the people who are uncovering this and are  
18 seeking accountability and transparency and leadership. They  
19 sue Dr. Stewart, they remove her as governor, and then they  
20 bring this charge against her for discipline and she's got, as  
21 I said, to appear at this hearing on June the 9th, 2013.

22 So she writes to them and she says on May 24th -- there's  
23 three -- as I said, the charging document, the May 8th letter  
24 says that we can submit written evidence. And so she does and  
25 she sends them three e-mails, lengthy documents, going through

1 the complaint and denying the allegations.

2 It says, "You conspired with Tim Bell to bring down the  
3 organization and to destroy it."

4 She says, "I don't even know Tim Bell."

5 Said, "You've conspired with Cassandra Newby to cause her  
6 to bring a sexual harassment claim against us."

7 She says, "I've spoken to the woman once in my life. I  
8 think I saw her at an annual meeting."

9 "You conspired with Dr. Castillo." She hadn't spoken to  
10 Dr. Castillo for five years before she got the call from Atwood  
11 Rice, she learned from them about this. All she did was speak  
12 up as a governor, "My goodness, what are we doing? Shouldn't  
13 we hold these people accountable? Shouldn't we have an  
14 investigation? Isn't it wrong to -- when there's a evidence  
15 like this brought forward, isn't it wrong for us to bring the  
16 people that are calling for the investigation and attack them  
17 and suspend them with no hearing?" That's all she did.

18 And so she defends herself in the letters. She also says,  
19 "You know, I'm not going to that hearing because I don't have  
20 any contact with the state of Florida and I'm not going to  
21 subject myself to jurisdiction in Florida." She opposed  
22 jurisdiction in Florida because she lives and works in  
23 California. And she said, "If I show up in Florida for your  
24 hearing, you're going to serve me with the papers and I'm going  
25 to be -- I'm going to lose my -- my objection to jurisdiction.



1 So I can't do that."

2 In fact, her husband even called and spoke to one of their  
3 lawyers and said, "Okay. Would you agree that if she came, you  
4 would not serve her with a complaint and not make her lose her  
5 jurisdiction argument?"

6 They said, "We're not going to make any promises to you."  
7 So they're trying to trap her into coming to Florida for -- you  
8 know, by setting up this disciplinary hearing in Florida.

9 Also, the three members of the disciplinary committee, one  
10 of them was Stephen Montes. He was the chair of that  
11 committee. He's the one that was involved in the FEC  
12 violations. He was the one that was the chair of the CME  
13 committee that got him on probation. He was the one at the  
14 center of that controversy, and Cerrato are best -- very close  
15 friends. Cerrato puts Montes and makes him the chair of the  
16 committee that's going to judge her.

17 And he also puts another good friend of his, Bart Maggio,  
18 on the committee and a fellow, Ken Wallace, who had replaced  
19 her. Cerrato and him -- I'm sorry. Ken Wallace had replaced  
20 her on the Academy of Dermatology as a governor. So he had  
21 everything to gain by her not coming back to that position, a  
22 position he wanted.

23 So she complained in one of the e-mails about the  
24 conflicts of interest, said, "This is not fair." You know,  
25 "This is all set up to" -- you know, "for me to fail."

1           They ignored her letter.

2           She said, "Can I participate by telephone?" Dr. Montes  
3 lives in Michigan, Dr. Maggio lives in New Jersey, Dr. Wallace  
4 lives in North Florida. They all had to fly to Tampa. She  
5 said, "Why don't we just do this by phone?"

6           "No, can't do it by phone."

7           She said, "Well, the annual meeting is in two weeks in  
8 Marina Del Rey, California." It just happened to be coming up  
9 in California. "It's just two weeks from now. Can we have my  
10 disciplinary hearing in California?"

11           "No, you've got to come to Florida."

12           Why? Serve her with process.

13           So she objects. She sends these letters and then they  
14 have their meeting on the 9th without her. And then there's  
15 a -- are you able to pull up documents there? -- there's an  
16 e-mail on June 10, 2012, from Mr. Montes. And this e-mail  
17 recommends that she be permanently expelled.

18           So this is Mr. Montes -- one of the people involved in the  
19 alleged misconduct -- and in here he says a couple of things.  
20 He says -- he says, "You know what? No written evidence was  
21 submitted to our committee. First -- first of all, she didn't  
22 show up."

23           Can you enlarge the first paragraph? It's kind of hard  
24 for people to read it.

25           It says that, "We didn't get anything in writing," when

1 she'd sent them three e-mails denying the allegations. Ken  
2 Wallace in his deposition testified, "I wasn't aware of any  
3 written defense. Nobody told me about it."

4 Then, Mr. Montes says in the next paragraph, he says,  
5 "Because she didn't appear and prove her innocence, we find her  
6 guilty." He completely flips it around of instead of innocent  
7 until proven guilty, he said, "She didn't prove her innocence,  
8 therefore, we find her guilty."

9 Can you enlarge this? It's kind of hard to read. Okay.

10 So you'll be able to see all this later during the trial.  
11 I know it's hard to see that right now.

12 So -- and he says -- and the final thing he says is, "So  
13 we recommend that Dr. Patricia Stewart and Dr. Leslie  
14 Radentz" -- the other female who had spoken up, just these two  
15 women -- "that they be permanently expelled from the AAPS  
16 without any further -- with loss of all rights and privileges."  
17 He wanted to make sure every escape hatch was closed.

18 And that's what Dr. Montes says to the committee, to the  
19 Board. And on June 13th, the Board votes. And you know how  
20 the Board met? By conference call. She's not allowed to  
21 participate in a conference call to orally present her defense,  
22 but the Board meets on June 13th, just four days later, by  
23 conference call and they vote to expel her.

24 But you're going to see the document later where they do  
25 this and I want you to look at the members of the Board who

1 vote to expel her: Bob Cerrato is there. He's one of the  
2 people that was the subject of the request for an investigation  
3 for receiving these payments; Herb Pardell, the one that was  
4 sending pornography to Mr. Carbone; Joseph Gallagher, also  
5 sending pornography to Mr. Carbone; Brian Feaver, also sending  
6 pornography to Mr. Carbone. All of these people who don't --  
7 who want this covered up are now the ones voting to expel her  
8 knowing what it means to have that black mark on your record.  
9 And that's what they did on June 13, 2012, a day she'll never  
10 forget.

11 Now, I told you that the first claim is for breach of  
12 contract and the question is whether or not this was fair,  
13 reasonable, and done in good faith.

14 Their second claim is for gender discrimination. And that  
15 claim is did the women -- I'm sorry -- did the AAPS  
16 discriminate based on gender? And you're going to see the  
17 evidence that although each of the men -- and there were a  
18 number of men involved in objecting and in calling for an  
19 investigation -- all of these men, none of them were  
20 disciplined, only the two women were. And the two women were  
21 not just disciplined. It wasn't like, you know, "Here's a  
22 warning. Get it right," you know, "Stop what you're doing.  
23 You got 90 days to fix it." It was expulsion permanent,  
24 forever to the two women.

25 Now, there was a -- one other part of this that I need to

1 explain. On June 7, 2012, in Tampa, Florida, there was a  
2 hearing on a motion for temporary injunction. Dr. Castillo,  
3 Geller, and Klein and another doctor, Dr. Cressey who had also  
4 been added to AAPS's lawsuit against Dr. Stewart and her  
5 husband, filed a motion for temporary injunction. And I  
6 represented them there. Dr. Stewart was not represented there  
7 because she was opposing jurisdiction, and had she appeared,  
8 and Dr. Radentz who's also a California medical doctor  
9 appeared, then they would have waived their jurisdiction  
10 argument. So they did not participate in that. And we brought  
11 a motion for temporary injunction saying that this disciplinary  
12 hearing on the 9th of June violated the bylaws and it wasn't  
13 fair and it should not get forward, and our motion -- that  
14 motion was granted.

15 So she wrote a letter to the AAPS on June 7th, the very  
16 same day, and she said, "The court in Florida just ruled  
17 everything you're doing to me is unlawful, and so I hereby  
18 request that you not proceed against me." And she then -- now  
19 the order didn't apply to her because she didn't want to waive  
20 jurisdiction. She didn't participate. But she said, "But you  
21 know you're crazy to go forward with me just having received a  
22 court ruling that you're violating the law with this hearing."

23 MR. KRUSHKOV: Objection.

24 MR. CONWELL: Well, they went --

25 MR. KRUSHKOV: Your Honor --

1 THE COURT: Sustained. Let's get to what the  
2 evidence will show. We're getting into closing argument here.

3 MR. CONWELL: Well, this is what her letter said.  
4 Her letter said, "Don't proceed against me," and so, as you've  
5 heard, they did. They proceeded on the 9th without her. They  
6 recommended permanent expulsion for what? For speaking up  
7 against an amendment? As an elected officer of this  
8 organization, she spoke up. She spoke up in defense of three  
9 physicians who called for accountability and transparency and  
10 simply asked for an investigation and nothing more. And for  
11 that she was expelled.

12 So you're going to hear about other instances of the  
13 discrimination, including the way Cassandra Newby was treated  
14 and including the environment among the leadership. This is a  
15 good ol' boy network where it's okay to distribute pornography,  
16 triple X videos, very, very explicit pornography, and you're  
17 going to see, and an organization of medical doctors that's  
18 okay there among the good ol' boys. It's okay to use degrading  
19 terms when addressing women like Cassandra Newby as Mr. Carbone  
20 did and there's no consequence. To this day there's been no  
21 consequence to Mr. Carbone even though all this has been  
22 exposed. In fact, there's a Board minutes where he's thanked  
23 by a doctor for his work in trying to police Dr. Castillo,  
24 Geller, and Klein.

25 It's okay for the CEO, Bill Carbone, to dress her down at

1 the annual meeting in 2011 for having the temerity to speak up  
2 about what was going on. It's okay for Herb Pardell to strike  
3 her on her breast with a stack of papers saying all these  
4 claims are false about Bill Carbone disseminating pornography.  
5 That's okay there. So you're going to hear about the gender  
6 discrimination.

7 Then you're going to hear also about mean conduct, in  
8 addition to what I've already told you. On June 21st, her  
9 husband, Bill Okerblom, sent an e-mail to AAPS. You know,  
10 she'd been expelled, they received that notice on the 20th of  
11 June, and he said, "We'd like to appear before the Board of  
12 Directors at the Marina Del Rey meeting," which is just around  
13 the corner four days later. "We'd like to do that."

14 And then she shows up at this meeting. Leslie Radentz  
15 does too because they're both local. And they go to the hotel  
16 at Marina Del Rey to attend the meeting and she's fully  
17 expecting to be able to participate as she always has at these  
18 annual meetings. She gets in there, she's able to get into the  
19 hotel, but the doors to where they're meeting are locked and  
20 there are guards who have been explicitly instructed by Bob  
21 Cerrato, "Do not let Dr. Radentz in this room," in this banquet  
22 room.

23 Meanwhile, Dr. Cerrato is in the banquet room with a  
24 PowerPoint presentation that AAPS has put together which  
25 supposedly exposes the unlawful injurious conduct of

1 Dr. Stewart and others. And there's a slide up there that's  
2 got her name on it, and he says, "She's got a blog,"  
3 something -- she is -- she is technophobic. She still uses a  
4 little tiny flip phone. She doesn't even have a smart phone.

5 He says, "She's running a blog and look at the things  
6 she's saying on the blog," knowing full well it's not her blog.  
7 Dr. Radentz had a blog; Dr. Stewart doesn't. And he makes  
8 claims about her in front of this body of her peers, former  
9 friends. And then he says, "I invite Dr. Stewart and  
10 Dr. Radentz to come up and respond," both of whom are out in  
11 the hallway trying to get in and the guards won't let them in.  
12 So there's an appearance now to their peers that there is no  
13 defense to the claims he's making about them.

14 Well, she then appeals -- she does two things. She files  
15 a lawsuit against them, and -- but not this lawsuit. She files  
16 a lawsuit against them and she appeals. She sends a letter on  
17 July 2nd of 2012, an e-mail asking, "Would you please send me  
18 minutes of the meeting of the Board of Directors on June 13th.  
19 I would like to see the minutes whereby I was expelled from  
20 your organization, and I'd like to see a transcript of the  
21 disciplinary committee hearing on June 9th. I want to know  
22 exactly what happened and I want to use this in my appeal."

23 She gets an e-mail back on July 3rd from Stephen Montes,  
24 very mean-spirited. And look at how he speaks so  
25 condescendingly to her, you know, commanding her what to do.



1 He says, "You've been told to only speak to our attorneys,"  
2 which wasn't true, "and now you're bringing in all this  
3 legalese." Well, what legalese? She asked for them to send  
4 her the transcript of the disciplinary hearing and the minutes  
5 of the meeting whereby she was expelled. He calls that  
6 legalese.

7 And then he says, "You know the protocol. Follow them."  
8 And this is the kind of men they are, no respect for women at  
9 all.

10 And she writes back and she said, "I'm sorry" -- this is  
11 right up the page -- "I'm sorry. I didn't know. Who are your  
12 attorneys? Who do you want me to talk to? I'll be glad --  
13 whatever the protocol is, I'll be glad to do it."

14 On June -- or July 27th she gets an e-mail from Bob  
15 Cerrato. He says, "The AAPS has granted your request for an  
16 appeal. And we're going to convene." And by the way, the  
17 bylaws say in Section 3.05 you have a right to an appeal, and  
18 the appellate panel consists of former presidents of the AAPS.  
19 Well, she's greatly comforted by this because she believes that  
20 these former presidents are not going to be beholding to  
21 Cerrato and Carbone and to Montes.

22 And so she drops her lawsuit because she's got an appeal,  
23 and she's confident that when they hear the evidence, the same  
24 thing I've told you, that she's going to be reinstated. But  
25 that day never comes. Her husband contacts the lawyers. They

1 said, "We'll let you know." Here we are three-and-a-half years  
2 later. We've never been given a date for an appeal 'cause they  
3 never intended to give her an appeal. And so that's the false  
4 promise part of this case. So she filed a lawsuit, this  
5 lawsuit, in I think September of 2013, and here we are.

6 So now the -- Carbone, Cerrato, Montes, the good ol' boys,  
7 they got what they wanted. They got her out forever. They  
8 denied her an appeal. They tried to hurt her; they succeeded.  
9 Now Dr. Stewart has to check the box when she credentials,  
10 "Yes, I've been disciplined by my professional certifying  
11 organization," and then you have to explain, "I've been  
12 permanently expelled for the rest of my career."

13 The damage to her from that scarlet letter will follow her  
14 throughout the rest of her career. And expert witnesses are  
15 going to come in here -- experts who analyzed these things are  
16 going to come in and talk about her past losses and her future  
17 losses, because this can't be fixed. And her income already  
18 has been cut in half. You're going to hear evidence about what  
19 she's done to try to reduce her losses, to try -- there's a  
20 national database whereby this sort of information on  
21 discipline is recorded, what she's done to try to allow  
22 contracts she has with providers to lapse rather than go  
23 through the credentialing process and thereby reveal that she's  
24 been permanently expelled from her organization. You're going  
25 to hear about efforts she's made to cut her losses, which they

1 are going to describe to you as efforts she's making to create  
2 loss. Again, flipping it around and going on the offense is  
3 their defense. And you're going to hear how she has lost -- or  
4 her past and future losses are in the millions of dollars for  
5 her loss of income as a dermatologist from the inability now to  
6 get the referrals and the preferred provider contracts and to  
7 join the medical groups. And you're going to hear about lost  
8 business opportunity that she experienced in San Luis Obispo on  
9 an opportunity there.

10 And you're going to hear about stress and emotional harm  
11 that she's experienced from the way that she was manhandled by  
12 the AAPs. You're going to hear about the shame she suffered  
13 from being shunned by her professional colleagues, from being  
14 isolated and banned. Their rules say you are banned from  
15 having any contact with any of your professional colleagues.  
16 So you've enjoyed these relationships for 20 years, people that  
17 they not only get together socially, but primarily to exchange  
18 information about the developments in their medical fields.  
19 Professional associations for doctors are extremely important  
20 for that purpose. She has no other place to go for that.  
21 You're going to -- you're going to hear about the losses in  
22 this case.

23 I want to finish by saying on behalf of Dr. Stewart, to  
24 each you, thank you. This is her problem. This is her fight.  
25 What happened happened to her, not to you. But you're here and

1 you're serving on this jury. This case is expected to go more  
2 than a week and you all have jobs. You've got other things to  
3 do in your life and we are very aware of that. And so we want  
4 to say thank you very much for your service. I really thank  
5 you for your attention, and thank you for listening to the  
6 evidence as it comes in on both sides of this case.

7 THE COURT: All right. Thank you, Mr. Conwell.

8 All right. Ladies and gentlemen, we're going to take our  
9 break early because I don't want to interrupt defense counsel's  
10 opening statement just to give the reporter a break. So we're  
11 going to break now.

12 Remember the admonition that I gave you yesterday about  
13 not discussing this matter until such time as it's submitted to  
14 you for your decision. All right.

15 THE COURTROOM DEPUTY: All rise.

16 THE COURT: Let's come back at 25 after the hour.

17 (A recess was taken.)

18 (Open court in the presence of the jury.)

19 THE COURT: All right. Ladies and gentlemen --  
20 well, the record will reflect the jury is here; all counsel and  
21 parties are here.

22 I will now have the opening statements from the defendant.

23 MR. SCHNEIDER: Thank you, your Honor.

24 THE COURT: Mr. Schneider.

25

**OPENING STATEMENT BY MR. SCHNEIDER**

MR. SCHNEIDER: Good morning, ladies and gentlemen.

You've just heard a long and impassioned speech by Mr. Conwell. As the Court informed you at the outset, nothing that Mr. Conwell said is evidence. Evidence only comes when witnesses are at the witness stand and exhibits are admitted into evidence. And to be fair, likewise, what I'm about to tell you is not evidence either.

You are ultimately going to be empowered to decide this case, but you should only do so after you have heard the actual evidence, and that means that you need to keep an open mind. The plaintiff is going to go first. They're going to be presenting their evidence. You should not make assumptions until you hear everything.

You've heard about an organization called AAPS. It's the American Association of Physician Specialists. The organization itself is largely a social and networking club with a very important component, and that very important component is board certification. And AAPS has a special arm that takes care of that, and that's called the American Board of Physician Specialties. That's part of AAPS that is ABPS.

You've heard how the plaintiff lost her membership in AAPS. AAPS itself does not certify physicians. ABPS certifies physicians. Dr. Stewart has at all times since she became certified remained certified. She is certified as we speak

1 right now.

2 AAPS has about 3,000 members who are physicians all across  
3 the United States. It operates with a small staff of 15  
4 people. Mr. Carbone is, indeed, the chief executive officer.  
5 Mr. Durante, who is seated at counsel table with us, is the  
6 chief operating -- or executive -- chief operating officer.

7 You heard how Dr. Stewart and Dr. Castillo -- and I'm told  
8 that is the proper pronunciation of his name -- and others  
9 brought complaints that they were unhappy about certain aspects  
10 of how AAPS operated. There is absolutely nothing wrong with  
11 that. And in order for any organization to survive, it has to  
12 listen to the members and consider what the members have to say  
13 and accept meaningful criticism of how they're operating. And  
14 indeed, AAPS has done that.

15 Some of the complaints that they have raised are quite  
16 legitimate. Some of them are not. None of them was sufficient  
17 to bring down the organization. That is a mischaracterization.

18 You saw a good deal of information concerning pornography.  
19 You saw an exhibit with a woman by a fire hydrant. You were  
20 told about a *Cheers* episode. You were told about photographs  
21 of young ladies playing Twister when they didn't have their  
22 clothes on. All of that is true. We are not denying that.  
23 That did occur. But what Mr. Conwell chose not to tell you is  
24 that after it came to light, it was addressed with Mr. Carbone,  
25 "You can't do this." Yes, it is grounds for termination. It

1 doesn't mean the person has to be terminated; you can counsel  
2 employees, and that is what they did. They counselled him.  
3 They told him to stop doing that. He did stop doing that.

4 And one thing that they haven't mentioned to you is none  
5 of this material was sent to Dr. Stewart. I can also add none  
6 of it was sent to Cassandra Newby, the terminated employee.  
7 The only person at AAPS, employee to whom it was sent, was Tim  
8 Bell, and Mr. Bell specifically requested it. Now, please  
9 understand, I am not telling you that AAPS condones any  
10 employee sending pornography by way of its office computers.  
11 That is not appropriate. But we're not talking about a victim  
12 with regards to Mr. Bell. And who is Mr. Bell? He is the  
13 former government affairs worker. He was terminated because he  
14 was a terrible employee. He didn't show up to work on time; he  
15 made lots and lots of mistakes.

16 You heard that Mr. Bell was sued by AAPS. That is true.  
17 What you didn't hear is that Mr. Bell sued AAPS. He sued them  
18 first. And ultimately AAPS obtained a judgment against  
19 Mr. Bell. Now, it is true that Mr. Bell elected not to defend  
20 himself. It is not true that that automatically means that a  
21 judgment is going to be granted. The plaintiff, or in this  
22 case the cross-complainant against Mr. Bell, AAPS, still had to  
23 prove its case and it did. It got a judgment against him for  
24 \$180,000.

25 I'd also like you to think for a moment while Mr. Conwell

1 is telling you that Dr. Castillo was talking to Mr. Bell, he is  
2 talking to Mr. Bell at a time that AAPS is in litigation with  
3 Mr. Bell. Mr. Bell was an opponent of AAPS. Mr. Bell had a  
4 stated goal of trying to take the entire organization down.  
5 That is the person that Dr. Castillo thought it was a good idea  
6 to exchange ideas with. Dr. Castillo did, Dr. Klein did, and  
7 Dr. Geller did.

8 You heard that Drs. Klein, Geller, and Castillo were  
9 suspended. Indeed, they were. What had happened was AAPS was  
10 monitoring Mr. Bell's e-mail because not everyone knew that he  
11 did not work there any more, and e-mails, business e-mails,  
12 would come to him. And AAPS had to address those e-mails.  
13 There's nothing sneaky about that. Companies do have the right  
14 to monitor their own employees' e-mails and that's what they  
15 were doing. And much to their surprise, they find an e-mail  
16 from Mr. Bell to somebody indicating that he is working with  
17 Dr. Klein, Dr. Castillo, and Dr. Geller that alarmed them.  
18 That very much alarmed them. He should -- those doctors should  
19 not have been communicating with a fellow who is in litigation  
20 against AAPS. This was an unprecedented situation for AAPS.

21 Now, let me go back a step and talk about AAPS and who the  
22 members and the Board of Directors are. They are volunteers.  
23 They are members who are physicians. They -- they don't get  
24 paid for their efforts in serving as directors. They really  
25 did not know how to address this situation. They got some



1 legal advice, and after getting the legal advice, they elected  
2 to suspended these doctors to protect the organization from  
3 people who were working with someone who had a stated goal of  
4 trying to destroy the organization. That's who these doctors  
5 were working with. That's why they got suspended.

6 They very much have an agenda. Dr. Castillo is going to  
7 be coming in to testify as a witness. He is far from an  
8 unbiased witness. As Mr. Conwell told you, he is in litigation  
9 right now against AAPS. He is suing AAPS; AAPS is suing him.  
10 So as you consider his testimony, you need to think about the  
11 fact that he is hardly unbiased.

12 You are also not going to meet Cassandra Newby, but you  
13 will see her testimony by way of video deposition. In point of  
14 fact, she was never harassed as an employee. She lied in her  
15 deposition about being called names by Mr. Carbone. She did  
16 file a lawsuit. The lawsuit was settled. The lawsuit was  
17 settled because an insurance company made them settle. That  
18 was not their idea. That happens all the time.

19 And you should also know just why Cassandra Newby was  
20 terminated. She didn't get fired for complaining about sexual  
21 harassment. She got fired because as she is walking down a  
22 hallway in the offices and another employee is walking down the  
23 hallway in the opposite direction, she decided it was a good  
24 idea to throw a hip check and slam this woman against the file  
25 cabinet. That's why she got fired. You are going to see the

1 video of that occurring, and that's the reason for her  
2 termination.

3       You've also heard that -- and let me tell you, I am not  
4 going to go through an entire chronology of everything that  
5 Mr. Conwell talked about. It's not that I'm trying to hide  
6 anything from you. You're going to hear all of the evidence.  
7 I'm trying to focus on those points that -- those facts that I  
8 think are most important for you to understand relative to your  
9 analysis of this case.

10       Dr. Stewart claims that she was terminated because she  
11 brought up legitimate complaints, and she claimed that she was  
12 discriminated against because she's female, because the men who  
13 complain about those things did not have their memberships  
14 removed. And Mr. Conwell told you about a hearing in June of  
15 2012 where the hearings that were going to go forward as to  
16 Drs. Klein, Geller, Castillo and Cressey did not go forward  
17 because the court issued something called a temporary  
18 restraining order. The operative word there is temporary. The  
19 judge didn't say that they could not ultimately meet with these  
20 individuals. The judge put it on hold. And two months later,  
21 there was another hearing and the court kept that injunction  
22 going. It's still going right now. They can't proceed with  
23 this -- these disciplinary meetings as to those four doctors.  
24 So it's not because they are men and Dr. Stewart is a woman and  
25 Dr. Radentz is a woman that Dr. Radentz and Dr. Stewart had

1 their membership removed and the four male doctors did not.  
2 The fact is AAPS could not proceed with regard to the four male  
3 doctors.

4           You also heard about the involvement of Dr. Okerblom. I  
5 don't know if his name was mentioned, but he is not only  
6 Dr. Stewart's lawyer, he is also her husband. And he wrote  
7 some letters on her behalf. And you heard -- well, one of  
8 them, called preliminary legal opinion, and I -- my voice drops  
9 an octave every time I use it because he makes it sound so  
10 somber -- and in this preliminary legal opinion that  
11 Dr. Stewart distributed at AAPS's annual meeting in 2011, he  
12 identified himself as Dr. Stewart's lawyer.

13           MR. KRUSHKOV: I think we're still connected to  
14 Mr. Schinnar's computer rather than the display. That's what  
15 we're seeing up here.

16           THE COURT: Flip it over to --

17           THE COURTROOM DEPUTY: -- to "Defendant." Push the  
18 button.

19           MR. SCHNEIDER: It's on "Defendant."

20           THE COURTROOM DEPUTY: Are you trying to show that  
21 document?

22           MR. SCHNEIDER: I'm just trying to show this  
23 document.

24           THE COURTROOM DEPUTY: Doc cam. Doc cam underneath  
25 the cabinet.

1 MR. SCHNEIDER: Oh, thank you.

2 THE COURTROOM DEPUTY: Yes. There you go.

3 MR. SCHNEIDER: Ah. Thank you.

4 Okay. This is the preliminary legal opinion and it indeed  
5 comes from -- it is from Dr. Okerblom. It's from the Law  
6 Offices of Dr. William A. Okerblom. And take a look at what it  
7 says under that, "Attorney for AA Physician Member Patricia  
8 Stewart." This is the same document. He three times  
9 references Dr. Stewart as "my client," not "my friend," not  
10 "some member." He is writing this letter as an attorney and  
11 he's writing as an attorney who is representing Dr. Patricia  
12 Stewart.

13 So that's one of the letters that he sent, and this letter  
14 is inaccurate in a multitude of ways. Some of it is half  
15 truth. Some of it is simply not truth whatsoever. So it's  
16 certainly legitimate for Dr. Stewart to raise complaints about  
17 issues going on with her organization -- no one is contesting  
18 that -- but not by way of inaccurate correspondence from a  
19 lawyer.

20 And after that, Dr. Stewart -- I'm sorry -- Dr. Okerblom  
21 acting again as her lawyer and her husband, continued to write,  
22 and he seemed to be emboldened because his correspondence got  
23 more and more vile.

24 In December of 2011, he wrote a letter to the Board of  
25 Directors and something called the House of Delegates. The way

1 this operation works with AAPS, they have a Board of Directors  
2 just like any other corporation, even though they're a  
3 not-for-profit corporation. They also have another body that  
4 is empowered with electing officers and approving amendments to  
5 bylaws. So if a bylaw's going to be amended, first the Board  
6 of Directors has to approve it, then the House of Delegates  
7 does.

8         So the Board of Directors approves an amendment to expand  
9 the powers of something called the Executive Committee. The  
10 Executive Committee consists of the six officers of the  
11 organization which includes the vice president, the  
12 president-elect -- one goes from vice president, the next year  
13 is president-elect, and then the year after that is  
14 president -- and it also includes the immediate past president.  
15 So the four of them plus the secretary/treasurer and the  
16 members' officer are the Executive Committee. They are all  
17 members of the Board of Directors. And the purpose of this  
18 amendment was not to take power away from the Board of  
19 Directors as a whole; the purpose of it was to allow a body to  
20 deal with things on an emergency urgent basis that would later  
21 have to be approved by the entire Board of Directors.

22         Remember, these people are volunteers. They are all  
23 across the country and it just is not that easy for them to  
24 mobilize. In fact, during a number of their telephone  
25 conference meetings, some of those doctors are on call. They

1 are emergency physicians, for example, who are at hospitals and  
2 are not in the emergency room at that moment treating patients.  
3 So these are people with full-time jobs who are assisting this  
4 organization by acting as directors.

5         So, Dr. Okerblom sends this letter to the entire Board of  
6 Directors and the entire House of Delegates. And he begins  
7 this correspondence by saying -- and as you can see, this is  
8 boldfaced, all capital letters -- "To all officers, Board  
9 members, and members of the House of Delegates collectively and  
10 individually." I suppose that's to make it look like he's very  
11 serious. And it begins with, "You are hereby notified that  
12 several concerned physician members and leaders of your  
13 organizations -- your organization have authorized me to  
14 informally -- to formally demand" blah, blah, blah. So he  
15 wants everyone's attention by way of this correspondence. And  
16 he is addressing this amendment.

17         Now, there is absolutely nothing wrong with any member of  
18 this organization opposing the amendment. We live in a country  
19 that has free speech, the right to vote on things, the right to  
20 make oneself heard. No problem with that whatsoever.

21         But that's not exactly what Dr. Okerblom on behalf of  
22 Dr. Stewart does in this letter. Instead, he says, "Prior to  
23 voting for such bylaw amendments" -- and then he goes to all --  
24 to bold -- "you are hereby" -- "you are hereby advised to seek  
25 legal advice" -- go out and get a lawyer -- "with regard to

1 your potential liability for aiding and abetting the executive  
2 officers and executive staff members of the AAPS in breaches of  
3 fiduciary duties that they owe to the members of AAPS."

4 And then he says, "Any persons who knowingly assist the  
5 executive leadership to violate their fiduciary duties may be  
6 named as co-defendants in a number of legal actions that are  
7 currently being drafted and that are expected to be filed  
8 within 90 days of the time that the proposed amendments are  
9 ratified."

10 And then he says, again in giant boldfaced type, "You are  
11 now on notice that lawsuits will be filed if the amendments are  
12 adopted."

13 Ladies and gentlemen, he is threatening to sue the  
14 volunteer members of this Board of Directors if they vote for  
15 an amendment because he doesn't like that amendment. So, yes,  
16 it is true this amendment did not pass. In fact, it never even  
17 came to a vote at that House of Delegates meeting. But  
18 Dr. Okerblom acting on behalf of Dr. Stewart had put the House  
19 of Delegates in a position where they had to worry about  
20 getting sued regarding their volunteer job for which they don't  
21 get paid if they didn't vote the way Dr. Okerblom and  
22 Dr. Stewart wanted them to vote.

23 I also want to tell you about something else that appears  
24 in this letter. Now, I told you a moment ago that one of the  
25 functions of the House of Delegates is to elect the officers of

1 the organization, and they do so at the annual meeting this --  
2 every year which is in June of each year. So in June of 2011,  
3 the president-elect was then a fellow named Dr. Dave McCann and  
4 he was coming up to become president. Dr. McCann told  
5 Mr. Carbone during that conference that he was dealing with  
6 abdominal pain and just did not feel well, and that his doctor  
7 said, "I need to talk to you." And even though there was a  
8 vote coming up for him to become president, Mr. Carbone told  
9 Dr. McCann, "Dave, your health is paramount. You need to go  
10 home." So he did. Nothing wrong with that.

11 The president of the organization at the time was  
12 Dr. Anthony Russo. Dr. Anthony Russo was told by either  
13 Dr. McCann or Mr. Carbone what the situation was with  
14 Dr. McCann, and he informed the members of the Board of  
15 Directors and then the members of the House of Delegates that  
16 Dr. McCann had to leave because he had a family emergency, and  
17 he did have a family emergency.

18 Here is what Dr. Okerblom wrote, quotes, "It will be  
19 alleged" -- and this is in the lawsuit that he is threatening  
20 to file against AAPS and anybody who votes for the amendment  
21 that he doesn't like -- "It will be alleged that the executive  
22 leadership knowingly and intentionally committed election  
23 fraud" -- fraud, that's a crime -- "by concealing from the  
24 voting members of the House of Delegates their knowledge of the  
25 fact that the nominated candidate for president, David McCann,



1 had been known by them prior to the election to have metastatic  
2 tumors in his pancreas and liver. Instead of disclosing that  
3 Dr. McCann was not present at the meeting because he discovered  
4 he was terminally ill, they stated simply that Dr. McCann was  
5 unable to attend the meeting because he had a family emergency  
6 thereby depriving the delegates of critical information that  
7 they needed to knowingly and intelligently exercise their right  
8 to elect the president of the AAPS." Now, like most  
9 organizations, there is a succession plan, and the person who's  
10 elected as president-elect would become president if the  
11 president became unable to serve. And remember again, this is  
12 a volunteer organization. We are not talking about the Chief  
13 Executive Officer of the United States.

14 So, firstly, he accuses these people of fraud and he is  
15 saying they already knew what his condition was. The fact is  
16 the leadership did not know. Dr. Cerrato did not know,  
17 Mr. Carbone did not know, Dr. Russo who spoke to both groups,  
18 the House of Delegates and the Board of Directors, he did not  
19 know, and ladies and gentlemen, Dr. McCann did not know that  
20 either. He hadn't been diagnosed yet. Well, he might have  
21 been diagnosed, but he didn't know what the diagnosis was.

22 So Dr. Okerblom thinks this is a good way of addressing  
23 the House of Delegates and the Board of Directors so that they  
24 can make good decisions by accusing people of fraud and  
25 threatening to sue volunteers.

1           And apparently this became a habit for Dr. Okerblom to be  
2     writing on behalf of himself and Dr. Stewart because just a few  
3     days later he sends yet another e-mail, an e-mail blast. And  
4     here he is talking about Dr. Cerrato. Now, you heard  
5     Mr. Conwell go on chapter and verse about Dr. Cerrato.  
6     Dr. Cerrato, in fact, did get paid by the organization, but not  
7     for serving as a director and not for serving as a volunteer.  
8     He was spending half of his time -- he's a physician, after  
9     all -- working for AAPS and he charged them for some of his  
10    time. You've heard charges that he engaged in the unauthorized  
11    practice of law, that he is licensed in New Jersey but was  
12    practicing law in Florida. Now, Mr. Bell, that you heard about  
13    before, had filed a complaint with the New Jersey Bar that  
14    Dr. Cerrato was practicing without a license in Florida. The  
15    New Jersey Bar ultimately investigated and dismissed that  
16    charge. He was not practicing law in Florida without a  
17    license. And then it didn't end there. Dr. Geller brings the  
18    same claim and the New Jersey State Bar comes to the same  
19    conclusion: He was not practicing law without a license.

20           But Dr. Okerblom goes after Dr. Cerrato, who for the most  
21    part is donating his time, just hammer and tong. Here is what  
22    he says in this e-mail blast -- it's not just a letter to  
23    Dr. Cerrato -- "Dr. Cerrato does not seem to know how to stay  
24    out of trouble. He seems to think that rules don't apply to  
25    him. He is very bold to try to bend the rules, even when

1 dealing with powerful authorities like the New Jersey Bar when  
2 he told them he was not providing legal services in Florida  
3 when he actually was."

4 Well, it's interesting that Dr. Okerblom knows that  
5 Dr. Cerrato is practicing in Florida when Dr. Cerrato doesn't  
6 know that and the New Jersey Bar concludes that that just was  
7 not true.

8 And he doesn't stop there, "Most doctors are prudent and  
9 careful and responsible. Dr. Cerrato seems to be a significant  
10 exception. He has practiced with reckless indifference to  
11 societal norms." This is what he's sending out to all kinds of  
12 people in this organization. Now is he doing this simply to  
13 register a complaint? No, he is going way past that.

14 "Certainly his conduct does not comport with the kind of  
15 character that typically belongs to the president of a  
16 board-certifying body. Unfortunately for the AAPS, the current  
17 Board has also violated its bylaws and followed Dr. Cerrato's  
18 very bad legal advice and example into disaster."

19 Well, Dr. Cerrato actually wasn't rendering them legal  
20 advice. And this disaster? Well, here we are five years later  
21 and this organization is still operating. They didn't exactly  
22 face disaster.

23 "They are now flirting with the total destruction of the  
24 organization." Well, not so much.

25 And then he says, "Dr. Cerrato may have to go. He has

1 proved that he is not qualified to run this organization  
2 anywhere but into the ground. Besides, there's a pretty good  
3 chance that he is going to need to focus his energy in getting  
4 his own life in order."

5 So Dr. Okerblom knows that Dr. Cerrato's life is out of  
6 order and this is what he's sending to lots and lots of people  
7 in the organization, "Perhaps a little bit of time off to do a  
8 little bit of soul searching and introspection might help him  
9 to figure out the difference between good and bad," again, way,  
10 way overboard.

11 So when you hear that Dr. Stewart was terminated merely  
12 for expressing contrary viewpoints, that's not exactly true.  
13 Those are the sort of things that are injurious to the  
14 organization.

15 And let me tell you why they are injurious to the  
16 organization. ABPS which is, again, the certifying body, is  
17 one of three national boards of this nature. They were in  
18 competition with the others. One of them, ABMS, has stated its  
19 goal in its own newsletter to drive ABPS and AAPS out of  
20 business. So that's -- that's what they are trying to deal  
21 with, and here's this doctor making all kinds of disparaging  
22 remarks about the organization.

23 And Dr. Stewart and Dr. Okerblom say, "Oh, no, I  
24 wasn't" -- you know, Dr. Okerblom was not representing her when  
25 he sent these letters. Well, the first thing that he sends

1 very clearly said he was representing her, "Attorney for  
2 Dr. Patricia Stewart." Then he sends these other letters, and  
3 he doesn't say, "I'm representing Dr. Smith or Dr. Jones," or,  
4 "I'm writing in my own behalf." He simply says, "I'm writing  
5 on behalf of several concerned physicians," without identifying  
6 who they were.

7 Well, this organization knows that he is Dr. Stewart's  
8 lawyer. He is saying he's representing anonymous doctors. All  
9 of the signs pointed to he is representing Dr. Stewart.

10 You also heard about this hearing that took place and you  
11 were shown an e-mail from Dr. Montes. By the way, you're not  
12 going to see Dr. Montes because, unfortunately, he passed away  
13 a few months ago. And there was a -- the disciplinary  
14 committee that you heard about, unfortunately, Dr. Maggio just  
15 passed away as well. The third member of that committee you're  
16 going to see video testimony from, that's Dr. Wallace. And you  
17 heard that -- from Mr. Conwell that Dr. Cerrato handpicked his  
18 best friends. He did not have a social relationship with any  
19 of those three doctors. He is going to tell you that he  
20 selected them not because of any bias, but because Dr. Montes  
21 and Dr. Maggio had been around a long time. Dr. Cerrato has  
22 been with this organization since 1992 or 1993 and those other  
23 two doctors were involved before him. So he wanted to have  
24 people who had experience. And he's going to tell you that he  
25 selected Dr. Wallace because -- on his theory of odd man out --

1 that you have two people who have a similar background -- he  
2 wanted to have somebody who was not a director participate in  
3 the process, somebody who did not have the experience the other  
4 two doctors did.

5 He also -- Mr. Conwell also told you that Dr. Wallace was  
6 biased because he ended up in the governor's seat that  
7 Dr. Stewart had been removed from. But regardless of how this  
8 vote turned out, Dr. Wallace was going to remain in that seat.  
9 The seat was vacant when he took it. So whether they expelled  
10 Dr. Stewart or didn't expel Dr. Stewart, Dr. Wallace would  
11 still be a governor of the Dermatological Academy.

12 So let's talk about what Dr. Stewart has done since her  
13 membership ended. Now, I told you before that she is  
14 certified. She really is certified. Now, this termination of  
15 membership occurred in June of 2012. In order to remain  
16 certified with this organization, each doctor has to pay what's  
17 called a maintenance fee, and they pay that every year. So  
18 Dr. Stewart had paid her maintenance fee for 2012 toward the  
19 end of 2011. So 2013 is approaching and Dr. Stewart paid her  
20 maintenance fee for 2013. So she knew that she was still  
21 certified. And when AAPS notified her of the loss of  
22 membership, it specifically stated, "You will remain  
23 certified." So she paid for 2013, then she paid for 2014. And  
24 then for reasons that are difficult to understand, she did not  
25 pay her maintenance fee for 2015, and to my knowledge she has

1 not paid it for 2016 either. And the directions that the  
2 people who man the phones at AAPS have in case anybody calls to  
3 ask about her are to say that she's in inactive status. She  
4 can change that inactive status whenever she likes by making  
5 the back payments.

6 Now, you also heard Mr. Conwell go on and on about this  
7 black mark that results from losing her membership. There's no  
8 black mark. Yes, that's a question that is asked by health  
9 plans, insurance companies, "Have you been disciplined by a  
10 professional society?" And the form says, "If the answer is  
11 yes, please provide an explanation." What those health plans  
12 and insurance companies are interested in is three things, and  
13 you're going to be hearing this from credentialing experts.  
14 They are interested in, "Do you have a current license?" They  
15 are interested in, "Are you currently board certified?" And  
16 they are interested in, "Have you engaged in poor patient  
17 care?"

18 Now, I have no reason to believe that Dr. Stewart is  
19 anything other than an outstanding dermatologist and fine  
20 physician. There is no evidence anywhere that she did not  
21 treat her patients properly or she had engaged in malpractice.  
22 And we presume that she remains --

23 THE COURT: I've been patient with the rebuttal long  
24 enough. Let's hear what the evidence will show.

25 MR. SCHNEIDER: Thank you, your Honor.

1           The evidence will show that she remains licensed to  
2 this -- that -- lost my train of thought here -- she is  
3 certified to this day.

4           You are not going to hear any witnesses from any insurance  
5 company or health plan come in to say that they had terminated  
6 their relationship with her. She terminated all of those  
7 relationships. The expert witnesses are going to tell you that  
8 these companies with whom she can do business really have no  
9 interest in whether she's been kicked out of an organization  
10 like AAPS.

11           Ladies and gentlemen, all of these facts ultimately will  
12 be borne out at trial. I appreciate that you have given both  
13 Mr. Conwell and me your undivided attention, and I hope you  
14 continue to do so throughout the litigation.

15           Again, we ask that you wait for all of the evidence to  
16 come in and then make your decision. Thank you for your  
17 attention.

18           THE COURT: Thank you, Mr. Schneider.

19           All right. Your first witness.

20           MR. CONWELL: First witness is Dr. Tom Castillo.

21           Your Honor, I've got some exhibits I want to use with him.  
22 May I pull them out now and put them up on the witness stand or  
23 furnish them to the Court's clerk? I think that'll make his  
24 testimony go more quickly. Thank you.

25           THE COURT: This is your liaison with the rest of



1 the world in this courtroom.

2 **THOMAS A CASTILLO, M.D., PLAINTIFF'S WITNESS, WAS SWORN**

3 THE COURTROOM DEPUTY: Please be seated.

4 THE WITNESS: Thank you.

5 THE COURTROOM DEPUTY: Please state your name and  
6 spell your last name for the record.

7 THE WITNESS: Thomas A. Castillo, C-a-s-t-i-l-l-o.

8 THE COURTROOM DEPUTY: Thank you.

9 MR. CONWELL: Thank you, your Honor.

10 May I proceed, your Honor?

11 THE COURT: Please.

12 MR. CONWELL: Thank you.

13 DIRECT EXAMINATION

14 BY MR. CONWELL:

15 Q Good morning. Can you state your full name, please?

16 A Thomas Alvin Castillo.

17 Q And what is your occupation?

18 A I'm a physician.

19 Q And how long have you been a physician?

20 A Since 1977, about 39 years.

21 Q And what is your specialty?

22 A Ophthalmology.

23 Q Where do you practice?

24 A I practice in Beaver Dam, Wisconsin.

25 Q Are you a member of the AAPS?

1 A Yes, I am.

2 Q What is your educational background?

3 A Uhm, I went to high school at DePaul University  
4 Academy in Chicago, Loyola University of Chicago, and I had a  
5 BS degree in biology. I went to medical school at Chicago  
6 College of Osteopathic Medicine and graduated in 1977 with my  
7 D.O. degree. I also was a teaching fellow in anatomy during  
8 that period of time. I did my internship and my residency in  
9 ophthalmology at Chicago Osteopathic Hospital in Olympia Fields  
10 Medical Center in Chicago and finished in 1981, and then  
11 received an MBA degree from St. Ambrose University in  
12 Davenport, Iowa, in 1994.

13 Q When did you join the the AAPS?

14 A It was in 1993, I believe, or '94.

15 Q What positions have you held in the AAPS?

16 A I was president of the AAPS. I was on the Executive  
17 Committee. I was on the -- I served on the Board of Directors.  
18 I served on the Medical Missions and Outreach Committee. I  
19 served as president of the American Association of Surgical  
20 Specialists. I served as the chair of the Board of  
21 Certification in Surgery. I served as a co-chair on the  
22 Certification Standards Committee which later became the  
23 American Board of Physician Specialties, and other committees.

24 Q Okay. What is the AAPS?

25 A AAPS is the board-certifying organization. It is

1 the third board-certifying -- multispecialty board-certifying  
2 organization in the United States. It certifies both oph- --  
3 D.O.s, rather, and M.D.s and their specialties, and it was  
4 formed in 1949 and incorporated in 1951.

5 Q Does it provide continuing medical education?

6 A Yes, it does.

7 Q And what part of the AAPS does that?

8 A The AAPS provides continuing medical education  
9 through its academies and it's done at the annual meetings in  
10 their scientific sessions.

11 Q Can you just explain for the jury what an academy  
12 is?

13 A A surgical academy -- all of the academies  
14 basically are groups of specialists in their field: surgery,  
15 internal medicine, dermatology, emergency medicine. They  
16 gather together to discuss scientific advancements, to provide  
17 lectures -- lecturers for the scientific meeting, propose  
18 policies in regards to their academies and the AAPS through  
19 their presidents and the counsel of presidents.

20 It's -- a lot of business is done at the academies.  
21 It's -- a lot of collegial networking is done as well. You're  
22 able to know, you know, who your colleagues are within the  
23 organization and across the country for referral purposes.  
24 That's --

25 Q Is AAPS just a social organization?

1 A No, it's not.

2 Q What is it?

3 A It is a board-certifying organization through its  
4 subsidiary, the American Board of Physician Specialties.

5 Q Is that a separate legal entity or is it just a  
6 division of AAPS?

7 A It is a division of the AAPS.

8 Q Okay. So they're one and the same --

9 A Yes.

10 Q -- in the same legal entity?

11 A Yes.

12 Q Okay. And you've used the term board certifying.  
13 Can you explain what that means?

14 A After you finish your residency training program, a  
15 physician will then go ahead and take a rigorous written  
16 examination and an oral examination and -- in surgical  
17 specialties, and they also take a clinical examination. There  
18 the examiner will come to the hospital or the facility and  
19 watch them do surgery to make sure that they're competent in  
20 their area of expertise.

21 Having completed that process, then they are felt to  
22 be what we call board certified, so that they passed all of  
23 these tests and they can claim to be board certified on any of  
24 the applications that they make.

25 Q And is AAPS recognized in all states as a

1 board-certifying organization?

2 A No, it is not.

3 Q And have you been a part of efforts in your  
4 leadership role at AAPS in obtaining recognition in other  
5 states?

6 A Yes, I have.

7 Q Can you describe what you've done and why this is  
8 important?

9 A I've attended several meetings of the Federation of  
10 State Medical Boards to advocate for the inclusion of AAPS in  
11 the FSMB which is an organization that has all of the medical  
12 boards around the country. You are -- when you apply for a  
13 license in a state, you have to go to your medical examining  
14 Board and then they will go ahead and determine, you know, if  
15 you have the qualifications to be licensed. And you can be  
16 licensed in any state, but it -- we were looking for the  
17 recognition to show that we are just as equally as stringent in  
18 our examinations and that our members are held to the highest  
19 standards as well as the other organizations.

20 Q Okay. Does AAPS hold itself out as -- or does it  
21 distinguish itself from the other two leading board-certifying  
22 organizations in the area of ethics?

23 A Yes, it does.

24 Q Can you explain?

25 A We, uhm -- AAPS was the only organization or is the

1     only organization that requires a nonremedial ethics course as  
2     part of their recertification process. Surgeons will --  
3     physicians will get recertified every eight to ten years, and  
4     as part of that process, the -- they would have to take a  
5     course on ethics in order to refamiliarize themselves with  
6     ethical behavior.

7           Q       Are AAPS members required to pledge to high ethical  
8     standards?

9           A       Yes, they are, on their application.

10          Q       And is the reputation of AAPS important in seeking  
11     and obtaining recognition from these state medical boards as a  
12     Board -- recognized board-certifying organization?

13          A       Absolutely.

14          Q       Can you explain?

15          A       Uhm, the -- in trying to -- can you state the  
16     question again?

17          Q       Yeah. You said that the reputation of AAPS was  
18     important in obtaining and retaining recognition from state  
19     medical boards as a board-certifying organization. Can you  
20     explain why that reputation is important in that process?

21          A       It's important in the process because in any medical  
22     field the patients have a -- the doctors have a duty of  
23     responsibility -- responsibility to maintain trust from their  
24     physician. They -- the patients need to know that they can  
25     trust the doctor and that they have maintained all of the

1 standards that we have claimed in our Hippocratic oath and in  
2 the -- within our organization as well.

3 It's highly important to all the patients that we --  
4 that we have this high standard, personal and professional.

5 Q Have you found in your work in attempting to get  
6 recognition from state medical boards that whether or not AAPS  
7 has a good reputation as a board-certifying organization helps  
8 it or hurts it in obtaining that recognition?

9 A Yes, it is important that they know this.

10 Q Okay. Do you know Dr. Patricia Stewart?

11 A Yes, I do.

12 Q And how do you know her?

13 A I met her back in the early 2000s when I was the  
14 co-chair of the certification standards committee and she was  
15 the chair of her board of certification in dermatology.

16 Q What does that mean, the chair of the board of  
17 certification?

18 A The two organizations, the AAPS and ABPS, the  
19 American Board of Physician Specialties are -- and which was  
20 previously the Board -- the certification standards committee,  
21 was the -- there are two -- there's an academy, which has all  
22 of the members, and then there is the board certification which  
23 includes members who have been board certified, so they're what  
24 we call diplomates. And they're able to go ahead and  
25 administer the examination and the tests that are necessary and

1 determine the requirements necessary to become board certified.

2 Q Was she the person in charge of doing that when she  
3 was the chair of board certification for anyone seeking  
4 certification in dermatology?

5 A Yes.

6 Q And did you and Dr. Stewart end up being involved in  
7 a controversy at AAPS involving alleged misconduct and  
8 corruption of some of the AAPS leaders?

9 A Yes.

10 MR. SCHNEIDER: Objection. Irrelevant.

11 THE COURT: Overruled.

12 Q (BY MR. CONWELL:) And did that include alleged  
13 misconduct of Bill Carbone, Dr. Bob Cerrato, and Dr. Stephen  
14 Montes?

15 A Yes, it did.

16 Q And do you know Mr. Carbone, Dr. Cerrato, and  
17 Dr. Montes?

18 A Yes, I do.

19 Q Have you heard of something called -- in the  
20 2010-2012 time frame something called the control group at  
21 AAPS?

22 A Yes, I have.

23 Q What is that or who was that control group?

24 A That control group was Dr. Robert Cerrato and  
25 Dr. Stephen Montes and Mr. Bill Carbone.



1 Q And how long have you known Mr. Carbone?

2 A Uhm, since I was a member of AAPS, since 1993 or '4.

3 Q How long have you known Dr. Bob Cerrato?

4 A I believe I met him somewhere in the -- around 2000  
5 or so.

6 Q And how long have you known Dr. Montes?

7 A I've known Dr. Montes since 1975. He was a medical  
8 student at Chicago College of Osteopathic Medicine when I was  
9 teaching anatomy as an anatomy fellow.

10 Q Have you observed the relationship between the three  
11 of them?

12 A Yes, I have.

13 Q Can you describe it?

14 A Uhm, they are very close friends and business  
15 acquaintances. They -- Dr. Cerrato and --

16 MR. KRUSHKOV: Objection, your Honor. Lack of  
17 foundation as to their business together. He's never  
18 established that he knows anything about that.

19 THE COURT: Just the grounds.

20 And sit down.

21 MR. KRUSHKOV: Apologies, your Honor. Thank you.

22 Q (BY MR. CONWELL:) Do you see them at AAPS meetings?

23 A Yes, I do.

24 Q Have you worked with them in your various leadership  
25 roles at the AAPS?

1 A Yes, I have.

2 Q Throughout the time that you've been at AAPS and  
3 known those three?

4 A Yes, I have.

5 Q And do you see them at dinners and banquets and so  
6 forth that the AAPS has its meetings?

7 A Yes, I have seen them.

8 Q Have you seen them with their spouses, those that  
9 have spouses?

10 A Yes.

11 Q And what have you seen in terms of their  
12 relationship?

13 A Uhm, when we were in Atlanta, Georgia, Dr. Steve  
14 Montes and his wife --

15 Q Can I stop you for a second? You said, "When we  
16 were in Atlanta, Georgia." Are you referring to the AAPS?

17 A The AAPS offices were located in Atlanta, Georgia,  
18 prior to 2007.

19 Q That's one thing I forgot to ask you. Where is AAPS  
20 headquartered now?

21 A They are in Tampa, Florida.

22 Q And prior to 2007 where were they headquartered?

23 A They were headquartered in Atlanta, Georgia.

24 Q Okay. So you were saying, "When we were in Atlanta,  
25 Georgia."

1           A       Yeah. When we were in Atlanta, Georgia, I would see  
2       them the -- Dr. Montes and his wife and Mr. Carbone and his  
3       wife would frequently socialize at -- out of the meeting they  
4       would go out for dinner, they would go to various functions.  
5       And then when they were at the annual meeting banquet, they  
6       would always be sitting together at the same table.

7           Q       Have you seen Dr. Cerrato doing anything in the AAPS  
8       to try to -- to help out Bill Carbone financially?

9           A       Yes. While I was on the Executive Committee,  
10      Dr. Cerrato had pushed for a pay raise for Mr. Carbone and had  
11      told us that, you know, if we didn't increase his money, that  
12      he would -- we would lose him.

13          Q       Did you give him the pay raise? Mr. Carbone get the  
14      pay raise as a result of Mr. Cerrato's efforts?

15          A       Yes, he did.

16          Q       Excuse me. Dr. Cerrato?

17          A       Yes.

18          Q       And can you -- let's go back to my questions earlier  
19      regarding this controversy that you and Dr. Stewart were  
20      involved with involving alleged misconduct and corruption of  
21      some of the leaders.

22                   Can you briefly describe the events that led up to  
23      that, that controversy?

24          A       There were a number of things that I was told about  
25      and discovered and learned. The -- we received a letter --

1 MR. SCHNEIDER: Objection, your Honor. This is  
2 hearsay.

3 THE COURT: Not yet. Overruled.

4 THE WITNESS: We received a letter -- the Board of  
5 Directors all received a letter from an attorney representing  
6 Timothy Bell which had included pornography that Mr. Carbone  
7 had been sending to other physicians, other members of the  
8 Board of Directors, people outside of the organization, and  
9 also had been sending them to staff members at AAPS.

10 Q (BY MR. CONWELL:) Okay. Were there a number of  
11 areas of alleged misconduct that were brought to your attention  
12 in 2010?

13 A Yes.

14 Q Okay. And can I show you a list that I used earlier  
15 and ask you to take a look, if you can see that on your screen.

16 Now, you just mentioned the pornography. You said  
17 you received that from an attorney representing Mr. Bell?

18 A That is correct.

19 Q And was that sent just to you?

20 A No, it was not.

21 Q Who was it sent to?

22 A It was sent to all the the members of the Board of  
23 Directors.

24 Q Okay. And did you have any personal knowledge one  
25 way or another whether or not Mr. Carbone was involved in

1 pornography at the workplace?

2 A Not until that time.

3 Q Okay. But -- now, the next one, racial and ethnic  
4 e-mails, what was communicated to you regarding that?

5 A In addition to the --

6 MR. KRUSHKOV: Objection. Hearsay.

7 THE COURT: Calls for hearsay. Sustained.

8 Q (BY MR. CONWELL:) Okay. Did somebody report to you  
9 that that was occurred and did that lead you to request an  
10 investigation?

11 MR. KRUSHKOV: Objection.

12 THE COURT: Overruled.

13 THE WITNESS: It was reported in the documents  
14 received from Mr. Bell's attorney.

15 Q (BY MR. CONWELL:) Okay. On the next one, was it  
16 reported to you and did you, therefore, request an  
17 investigation, that there was sexual harassment and gender  
18 discrimination taking place at the CEO level at AAPS?

19 MR. KRUSHKOV: Objection, your Honor. Hearsay.

20 THE COURT: It is not. Calls for a yes or no only.

21 THE WITNESS: Yes.

22 THE COURT: Overruled.

23 Q (BY MR. CONWELL:) Okay. Was it purported to you  
24 and did you, therefore, request an investigation, that there  
25 was alleged violations of federal election laws?

1 A Yes.

2 Q And was it reported to you and did you, therefore,  
3 request an investigation, that the continuing medical education  
4 rights -- or excuse me -- the right of AAPS to conduct  
5 continuing medical education had been put on probation by the  
6 ACCME?

7 A Yes.

8 Q And did you, therefore, request an investigation?

9 A Yes.

10 Q Was it reported to you that there was unlawful  
11 compensation of Bob Cerrato?

12 A Yes.

13 Q And did you request an investigation?

14 A Yes.

15 Q And was it reported to you that there was alleged  
16 unlicensed practice of law by Bob Cerrato?

17 A Yes.

18 Q And did you request an investigation?

19 A Yes.

20 Q Were these issues of importance to you as a director  
21 of the AAPS?

22 A Absolutely, sir.

23 Q Why were they important to you?

24 A It destroyed the credibility of the organization,  
25 the credibility of the members of the organization and our

1 attempts to seek recognition across the country for all of our  
2 members.

3 Q Well, what did you -- what concern did you have  
4 about what would happen to the AAPS's efforts to be recognized  
5 by these medical boards if these allegations were true?

6 A It would be scandalous. We would -- we would have  
7 difficulty at success at all in trying to show that we were  
8 physicians who held high ethical standards that were high  
9 standards in regards to their finances, high standards in  
10 regards to their education. Basically, it put us in such a bad  
11 position that it threatened to really be recognized anywhere in  
12 hospitals or states or insurance companies, any of the medical  
13 organizations or groups.

14 Q Okay. And did you -- let me ask you specifically  
15 regarding the pornography. Now, did you come to learn later  
16 that, in fact, Mr. Carbone was involved in receiving and then  
17 forwarding e-mails containing pornographic images, including  
18 triple X video showing an orgy and other such things?

19 MR. SCHNEIDER: Objection. Asked and answered and  
20 lacks foundation.

21 THE COURT: Overruled.

22 THE WITNESS: Yes. I found -- we did -- were able  
23 to verify that this was true. Mr. Carbone in his deposition  
24 admitted to it.

25 Q (BY MR. CONWELL:) Now, what I -- were you at his

1 deposition where he admitted to it?

2 A Yes, I was.

3 Q And I want to focus specifically on pornography.

4 What concern did you have about the allegation that  
5 this sort of thing was taking place in an association that was  
6 supposed to be a professional association of doctors?

7 A As physicians, we ask our patients -- fortunately  
8 not for ophthalmology -- but we ask our patients to get  
9 undressed. As family physicians, as anesthesiologists, many  
10 times we're viewing a naked body -- obstetrics, gynecology,  
11 there's a number of areas here that require that.

12 When you have people who see women as sexual objects  
13 or sexual fantasies, it makes you concerned that these people  
14 may not be --

15 MR. KRUSHKOV: Objection. Speculation.

16 THE WITNESS: I'm concerned.

17 THE COURT: Overruled.

18 MR. CONWELL: He's describing his concern.

19 Q (BY MR. CONWELL:) So --

20 A It makes -- let me put -- it makes me concerned that  
21 patients will then not be able to trust their physicians and,  
22 you know, we are one of the top three trusted people in this  
23 country according to surveys, and it's important for us to be  
24 able to engender the confidence to be able to treat and  
25 reassure our patients that they will be getting the best care,



1 and that when they send their wives or their daughters or their  
2 sisters to a physician, that they're not being viewed as a  
3 sexual object.

4 Q And how did that affect you or motivate you when you  
5 heard these allegations that this was -- this pornography was  
6 being disseminated and exchanged among members of the Board  
7 with your CEO?

8 A I was disgusted. I was disappointed. I was -- knew  
9 that we had to do something in order to be able to investigate  
10 these allegations.

11 Q Would you -- were you concerned at all that if these  
12 allegations were true, that that would affect the AAPS's  
13 ability to obtain or retain its recognition by medical boards  
14 as a board-certifying organization?

15 MR. KRUSHKOV: Your Honor, objection. Leading  
16 questions. This is direct.

17 THE COURT: Sustained.

18 Q (BY MR. CONWELL:) Can you tell us one way or  
19 another that was an issue that was of concern to you?

20 A That was an issue that was of concern to me.

21 MR. CONWELL: I'd like you to take a look at  
22 Exhibit 1718 which is the employee handbook.

23 (Exhibit 1718 previously marked for identification.)

24 MR. CONWELL: Your Honor, I don't think there's any  
25 dispute about this document. We offer it.

1 MR. SCHNEIDER: No objection.

2 (Exhibit 1718 received into evidence.)

3 Q (BY MR. CONWELL:) Now, is this a document that you  
4 were familiar with as a member of the Board of Directors?

5 A Yes, sir.

6 Q Does the document show that -- state anything about  
7 whether or not this document is, in fact, from the Board of  
8 Directors?

9 A Yes. On the page 6 there is a welcome and it says  
10 it's from the Board of Directors and the Chief Executive  
11 Officer.

12 Q Okay. Now, can you go to page 23?

13 A Yes, sir.

14 Q Do you recall that the employee handbook says  
15 anything about viewing or possessing pornography in the  
16 workplace?

17 A Yes, sir.

18 Q And what do you recall?

19 MR. SCHNEIDER: Objection. The document should be  
20 the -- it's hearsay.

21 THE COURT: He asked him what does he recall.

22 MR. SCHNEIDER: What he recalls we object as  
23 irrelevant.

24 THE COURT: Overruled.

25 Q (BY MR. CONWELL:) Okay. So can you look on page 23

1 where it says, "The following actions, among other things,  
2 could constitute ground for immediate dismissal."

3 A Yeah. I have that in front of me, yes, sir.

4 Q See that? And then if you go down the line, it  
5 says, "Displaying, disseminating, or discussing pornographic or  
6 sexually explicit materials or information." You see that?

7 A Yes, I do, sir.

8 Q Why is that in the handbook?

9 A Because it's totally against the mission statement  
10 and the code of ethics of the AAPS and its employees -- its  
11 physicians and employees.

12 Q Okay. And so when it was brought to your attention  
13 that there was an allegation that Mr. Carbone was engaging in  
14 this very conduct, did you take any steps to report that to  
15 anyone and do something about it?

16 A Yes. I notified the president-elect, Dr. David  
17 McCann, who was on the Executive Committee.

18 Q And approximately when was that?

19 A That was in July of 2010.

20 Q All right. And why did you report it to Dr. McCann?

21 A 'Cause Dr. McCann was going to be the next president  
22 of the AAPS and I felt that it would be good for him to go  
23 ahead and bring this forward since I knew him and I believed  
24 him to be a man of high moral standards.

25 Q And did you bring anything else to his attention

1 from the allegations that we went through a moment ago?

2 A I brought to him the allegations regarding the  
3 possible sexual harassment and discrimination against a female  
4 employee, as well as the -- the FEC controversy and the --

5 MR. KRUSHKOV: Objection, your Honor. Lack of  
6 foundation.

7 THE COURT: Overruled.

8 THE WITNESS: And the -- also the license to  
9 practice law and pretty much everything. I told him these were  
10 all terrible, but the sexual -- the pornography was probably  
11 the worst possible thing and that was sent to all of the Board  
12 members, so he should have had a copy already.

13 Q (BY MR. CONWELL:) And why were you asking that the  
14 Board conduct an investigation?

15 A Because the protocol basically would say that if  
16 this type of thing was found amongst our executive -- in other  
17 words, the staff, then we would have to take it up through --

18 MR. KRUSHKOV: Objection. Lack of foundation.  
19 There's been no discussion of any protocol or anything of that  
20 nature.

21 THE COURT: Overruled.

22 THE WITNESS: In the organizational chart and our --  
23 it is necessary for us to go through and have a chain of  
24 command. I took this up through the chain of command.

25 Q (BY MR. CONWELL:) Okay. Now, I want to ask you

1 specifically about the Federal Election Commission alleged  
2 violations. Did you have any personal knowledge in that in  
3 addition to anything else that was communicated to you in 2010  
4 by Mr. Bell?

5 A In 2008, Brian Shufford was the Director of  
6 Government Affairs, while I was the chair of the Government  
7 Affairs Committee --

8 Q And this is -- let me just stop you for a second.  
9 Mr. Shufford was the Government Affairs Director for AAPS?

10 A That is correct.

11 Q And you were the chair of the Government Affairs  
12 Committee for AAPS?

13 A That is correct.

14 Q And now is Mr. Shufford paid staff or is he  
15 volunteer like you?

16 A He's paid staff.

17 Q Okay. So now go ahead. What happened?

18 A He had left AAPS because of the mishandling of funds  
19 by Stephen Montes --

20 MR. SCHNEIDER: Objection. Lacks foundation.

21 MR. KRUSHKOV: Objection --

22 THE COURT: Sustained.

23 Q (BY MR. CONWELL:) Well, did you work with  
24 Mr. Shufford in your position as the chair of the Government  
25 Affairs Committee?

1           A       Yes, I did.

2           Q       And is one of the things that you all did in working  
3 together have meetings and carry on business regarding the  
4 handling of funds for making political contributions?

5           A       Yes, we did -- I did.

6           Q       Okay. And so go on. What happened?

7           A       Well, basically in the transfer of funds in 2008,  
8 apparently there were --

9                   MR. SCHNEIDER: Objection. Lacks foundation.

10                  THE COURT: Overruled.

11                  THE WITNESS: -- there was -- there was a  
12 mishandling of funds. This was reported and Mr. Shufford left  
13 because he didn't want to be around when the FEC found out what  
14 was going on.

15                  MR. SCHNEIDER: Objection. Lacks foundation.

16                  THE COURT: Sustained.

17           Q       (BY MR. CONWELL:) Did you have discussions with  
18 Mr. Shufford about whether or not he felt safe staying at AAPS  
19 under those conditions?

20                  MR. KRUSHKOV: Objection. Leading and speculation.

21                  THE COURT: Overruled.

22                  THE WITNESS: Yes, I did.

23           Q       (BY MR. CONWELL:) Okay. And from that, did you  
24 learn that he felt very uncomfortable staying?

25           A       Yes.

1 MR. KRUSHKOV: Objection. Hearsay.

2 THE COURT: Overruled.

3 THE WITNESS: Yes.

4 Q (BY MR. CONWELL:) Okay. And then in -- what -- can  
5 you just describe to the jury what the issue was regarding the  
6 mishandling of funds?

7 MR. KRUSHKOV: Objection, your Honor. Mr. --  
8 Dr. Cerrato is not an attorney and he cannot opine on the  
9 legalities of various laws and the violations thereof.

10 THE COURT: Overruled. Make that the last speaking  
11 objection.

12 THE WITNESS: Would you repeat the question again  
13 for me, please?

14 Q (BY MR. CONWELL:) Yes. You said you were the chair  
15 of the Government Affairs Committee?

16 A That's correct.

17 Q And did the Government Affairs Committee have  
18 oversight or any responsibility involving the issues involving  
19 the Federal Election Campaign laws?

20 A Yes. We -- we would -- the political action  
21 committee would determine who funds would be distributed to in  
22 various political campaigns, and the moneys that would be  
23 collected and donated to the PAC were supposed to be separate  
24 from moneys given to the American Association of Physician  
25 Specialists. They have to be completely separate

1 contributions, otherwise they violate --

2 MR. KRUSHKOV: Objection. Legal opinion.

3 THE COURT: Overruled.

4 THE WITNESS: -- unless they will violate federal  
5 election laws, just like any one of us would be required to  
6 report donations that we give to candidates.

7 Q (BY MR. CONWELL:) And did AAPS have a PAC fund?

8 A Yes, they did.

9 Q And what is that?

10 A Political action committee fund. People would  
11 contribute to that fund in order to support various candidates  
12 that were sympathetic to the causes of AAPS.

13 Q Okay. And what was the role of Stephen Montes  
14 regarding those funds?

15 A He was the chair of the PAC committee and he oversaw  
16 the receipt and disbursement of funds.

17 Q Okay. So when you heard from Mr. Bell in 2011 that  
18 there was a potential problem for AAPS related to the handling  
19 of funds with the Federal Election Commission, was that  
20 something that you already had some background with?

21 A Yes. As I said, I had learned that from  
22 Mr. Shufford.

23 MR. CONWELL: Now, I'd like you to take a look at  
24 Exhibit 224.

25 I don't believe there's any objection to this, your Honor.



1 We're offering Exhibit 224.

2 MR. SCHNEIDER: If you could focus it. I can't see  
3 it.

4 (Exhibit 224 previously marked for identification.)

5 MR. SCHNEIDER: Thank you.

6 MR. CONWELL: Is that admitted, your Honor?

7 THE COURT: Any objection?

8 MR. SCHNEIDER: No.

9 THE COURT: Okay. Be admitted.

10 (Exhibit 224 received into evidence.)

11 Q (BY MR. CONWELL:) So Dr. Cerrato, take a look at  
12 the e-mail from David McCann to you dated August 3rd of 2010.

13 Can you -- first of all, just tell us what the  
14 context is of this e-mail. What's going on at this time?

15 A After receiving the letter from Mr. Bell's attorney,  
16 the demand letter, we -- I had spoken with Dr. McCann and asked  
17 that he would look into initiating investigation into these  
18 allegations, and he said that he would be making contact with  
19 the other members of the Board and Executive Committee.

20 Q Okay. And then can you just read this e-mail to us?

21 A (Reading:)

22 "Tom, I called for a Board of Directors  
23 meeting within 30 days, but the  
24 investigation into the e-mails, etc., will  
25 take longer than that. Tony R." -- that's

1 Tony Russo -- "is leaning toward mid  
2 October for a Board of Directors meeting.  
3 D."

4 Q And what e-mails were you discussing with David  
5 McCann at that time?

6 A I believe we were discussing e-mails regarding  
7 pornography and racist e-mails.

8 Q Okay. So did you think that an investigation was  
9 going to take place?

10 A Yes, I did.

11 Q And then what -- did an investigation into those  
12 allegations take place?

13 A No.

14 Q What happened?

15 A I found myself, Dr. Klein, and Dr. Geller  
16 suspended --

17 Q Okay.

18 A -- from membership of AAPS.

19 Q And when did that happen?

20 A October 8th, 2010.

21 Q Did -- who's Dr. Geller and who's Dr. Klein?

22 A Dr. Geller is an emergency room physician, emergency  
23 medicine physician, and he was a member of the Board of  
24 Directors, as I was. And Dr. Klein was a leader in the  
25 Disaster Medicine Board -- the American Board of Disaster

1 Medicine.

2 Q And how were they involved in this?

3 A Dr. Klein had been in contact with Mr. Bell.

4 Mr. Bell had reported to Dr. Klein the --

5 MR. SCHNEIDER: Objection. Hearsay.

6 THE COURT: Overruled.

7 THE WITNESS: Dr. Klein had reported to Dr. McCann  
8 about these misconduct and the pornographic e-mails, and  
9 Dr. Geller also -- Dr. Klein spoke with Dr. Geller, and  
10 Dr. Geller spoke with Tim Bell, and then Dr. Geller also spoke  
11 to me as a past president and a fellow Board member.

12 Q (BY MR. CONWELL:) Okay. Now, do you know or have  
13 you seen that AAPS sued Timothy Bell?

14 A Yes.

15 Q And was that subsequent to all of this? Was that  
16 subsequent to the time that these communications with Mr. Bell  
17 occurred?

18 A Yes.

19 Q Okay. So after you brought the allegations to the  
20 attention of David McCann, sometime after that is when there  
21 was a lawsuit filed against Mr. Bell by AAPS?

22 A I believe that is correct.

23 Q And the discussions you had with Mr. Bell, that was  
24 also before the lawsuit was filed by AAPS against Mr. Bell?

25 A That is correct.

1           Q       And the same for what you described regarding Drs.  
2 Geller and Klein, the Florida lawsuit?

3           A       That is correct.

4           Q       Okay. And so tell me more about what -- what  
5 exactly was communicated to you about you and Dr. Geller and  
6 Dr. Klein being suspended, your having your membership  
7 suspended by the AAPS.

8           A       On October 8th I received two letters, one from AAPS  
9 attorneys telling us that we had been named or at least were  
10 co-conspirators in this lawsuit against Tim Bell, and we also  
11 received a letter from Dr. Russo telling us that we had been  
12 suspended from our memberships in accordance with the bylaws  
13 3.05 and 3.06.

14          Q       And for how long?

15          A       For a minimum of six months, but it could be  
16 extended longer.

17          Q       And did they say anything about an investigation?

18          A       Yes. They said there would be an investigation and  
19 that we were to have no contact with anyone from AAPS and not  
20 to be at any of the meetings or be on the property of AAPS, and  
21 that we would be appointed a liaison within two weeks of the  
22 letter and --

23          Q       Was this an investigation of the misconduct that you  
24 had brought to the attention of David McCann or was this an  
25 investigation into you?

1           A       This was an investigation into me, into Dr. Klein,  
2           and to Dr. Geller.

3           Q       And so what happened after -- after that, after you  
4           got that notice that now you were being investigated and you  
5           were being suspended?

6           A       In accordance with the bylaws, we contacted an  
7           attorney to represent us and -- and asked to give depositions  
8           and speak on our behalf before the Board in accordance with the  
9           bylaws.

10          Q       Did you volunteer to give a deposition?

11          A       Yes, sir.

12          Q       And did your attorney volunteer both you and Mr. --  
13          Dr. Geller and Dr. Klein to give depositions?

14          A       Yes.

15                   MR. SCHNEIDER: Objection. Lacks foundation.  
16          Hearsay.

17                   THE COURT: Overruled.

18          Q       (BY MR. CONWELL:) And did AAPS then come take your  
19          deposition?

20          A       No, sir.

21          Q       Did they do anything to investigate you that you  
22          know of?

23          A       No, sir.

24          Q       So after your efforts to get AAPS to come get a  
25          deposition of you -- well, what did you want to say? What were

1 you -- what was the reason for you wanting them to depose you?

2 A We wanted to be able to explain that the only thing  
3 that we had done was ask for a investigation into the  
4 allegations of this misconduct and that we were not attempting  
5 to harm the AAPS in any way, shape, or form, and that we felt  
6 that the best way to go about things is through the regular  
7 chain of command and protocols and take it through to the Board  
8 of Directors and ask for their investigation.

9 Q Did you have any reason to want to harm the AAPS?

10 A I've been a member for -- well, since, like I said,  
11 1993, '94. I've been in all of these positions to serve AAPS.  
12 AAPS is how I am board certified. So with my board  
13 certification dependent upon AAPS, if I was not a member in  
14 good standing, I would not be able to hold myself out as being  
15 board certified according to our bylaws.

16 Q So when they said that you were engaging in conduct  
17 injurious to the best interests of the AAPS, did they ever tell  
18 you what -- what exactly is it about requesting an  
19 investigation into misconduct they considered to be injurious  
20 to the best interests of AAPS?

21 A No, they did not.

22 Q So did you do anything then to try to get your  
23 membership restored?

24 A Uhm, after they had --

25 Q Excuse me. Let's just take it one at a time.

1 Did you do anything to try to get your membership  
2 restored?

3 A Yes, I did.

4 Q What did you do?

5 A We hired you to represent us in Florida and you sent  
6 a demand letter on March 18th, 2011, asking that we be restored  
7 to all of our membership rights and also to our directorship  
8 positions for Dr. Geller and myself.

9 Q Okay. And did AAPS comply with the demand?

10 A No, they did not.

11 Q So what did you do next?

12 A Since we could not seem to get relief in our own  
13 organization, we filed a lawsuit.

14 Q Okay. And at this stage, having been put in this  
15 category of suspended as opposed to expelled, you were  
16 suspended; is that right?

17 A That is correct.

18 Q So was it of concern to you that now you were  
19 suspended in the AAPS?

20 A Yes, it was a concern to me.

21 Q Were -- as a suspended member, were you a member in  
22 good standing?

23 A No, I was not.

24 Q And why was that a concern to you?

25 A Because I would have to report this to the insurance

1 companies. I'd have to report it to my -- to the hospital  
2 staff. I'd have to report this to medical board. I'd have to  
3 report it to just about everybody that I dealt with that I was  
4 not a member in good standing and that I had been suspended.

5 Q Why is that a problem?

6 A Basically it means that I might not be able to get  
7 staff privileges at the hospital, or have them removed. I  
8 might be -- would lose insurance contracts. I wouldn't be able  
9 to take care of patients. They -- just the simple fact that  
10 you have to check off on a form a yes, you know, that I had  
11 been suspended, you know, then you have to try and explain  
12 that, you know, this is not because of my medical incompetency  
13 or some other reason. And it places a black mark on my record  
14 that is indelible. It's going to stay there forever. So I had  
15 to do something and as did Dr. Geller and Dr. Klein in order to  
16 restore our reputations.

17 Q And do you recall that AAPS filed a lawsuit against  
18 you?

19 A Yes.

20 Q Who else did they sue at this time back in this  
21 early 2011 time frame?

22 A In 2011 AAPS then filed a counterclaim against --  
23 let me see. Was that 2011? No, they just filed the lawsuit --  
24 in 2011 the lawsuit was filed, uhm, against Drs. Geller, Klein,  
25 and myself. And then later on they amended the lawsuit to



1 include others.

2 Q Okay. So do you recall -- well, we talked about the  
3 fact that they had sued Timothy Bell?

4 A That's correct.

5 Q Now, did you read the complaint?

6 A Yes, I did.

7 Q Did you become aware that AAPS had -- was making an  
8 allegation that you, Dr. Geller, and Dr. Klein were conspiring  
9 with Timothy Bell to disseminate pornography?

10 A Yes.

11 Q And had you ever done that?

12 A No, we did not.

13 Q And were you made aware of efforts that were being  
14 made by the people that you had called to be investigated to  
15 discredit you in the organization?

16 A I was not aware of that at the -- at the time.

17 Q Did you learn later that that was happening?

18 A Yes, I did.

19 Q Did you learn later that they were alleging that you  
20 were the one disseminating pornography with Mr. Bell?

21 A Yes, I did learn that later.

22 Q And had you ever done anything of the sort?

23 A No, I have not, never.

24 Q At some point were you contacted by Dr. Atwood Rice?

25 A Yes, I was.

1 Q Who is Dr. Atwood Rice?

2 A Atwood Rice is an emergency medicine physician and  
3 an attorney, as well as an M. D., and a member of AAPS.

4 Q And approximately when did he contact you?

5 A I believe that was in February of 200- -- 2012.

6 Q You were -- you were disciplined in October of 2010?

7 A Let me think here now. We were disciplined in  
8 October 2010, and then in -- let's see -- in 20- -- no. That  
9 was in 2011. In 2011, yeah, February of 2011 is about when we  
10 were doing that.

11 Q Let me ask you. You recall -- well, AAPS, does it  
12 have annual meetings?

13 A Yes, it does.

14 Q And where was the annual meeting in 2010?

15 A In Orlando, Florida.

16 Q And where was it in 2011?

17 A Tysons Corner in Virginia.

18 Q Virginia near Washington, D.C.?

19 A That's correct.

20 Q And did Dr. Rice contact you before that 2011  
21 meeting?

22 A Yes. So it would have been February 20th.

23 Q Okay. And what happened when he contacted you?

24 A He asked me what -- why Dr. Geller and --

25 MR. KRUSHKOV: Objection. Hearsay.

1 THE COURT: He said, "What happened? What happened  
2 during the meeting?"

3 THE WITNESS: Yes. He asked me why I had --

4 MR. KRUSHKOV: Objection. Hearsay.

5 THE COURT: Overruled.

6 THE WITNESS: He asked me why I had been suspended  
7 and I explained to him the circumstances and what had gone on.  
8 And --

9 Q (BY MR. CONWELL:) Now, what was his affiliation  
10 with the Academy for Emergency Medicine?

11 A I believe he was an officer in the Academy of  
12 Emergency Medicine at the time.

13 Q And how large of an academy is the Academy of  
14 Emergency Medicine at AAPS?

15 A Emergency medicine is the largest academy. They're  
16 the largest number of members in AAPS.

17 Q Okay. And so --

18 A Maybe about 2,000 members, I believe. I can't  
19 recall exactly the number of members, but it's a substantial  
20 portion of AAPS.

21 Q At some point were you contacted by Dr. Stewart?

22 A Yes, I was.

23 Q And when was that?

24 A I believe that was in March of 2011.

25 Q And what happened?

1           A       She asked me, you know, why was I suspended.

2                   MR. KRUSHKOV:  Objection.  Hearsay.

3                   THE COURT:  Overruled.

4                   THE WITNESS:  And also asked me why I was suing the  
5 organization.

6           Q       (BY MR. CONWELL:)  Okay.  And what did you tell her?

7           A       I told her that I had no other choice.  Uhm, we had  
8 taken it through -- tried to get this resolved through the  
9 normal channels, and that in order to restore our membership  
10 and to restore our reputations and for the protection of the  
11 organization and the patients, you know, it was -- it had  
12 become necessary to go ahead and take it outside of the  
13 organization to the courts.

14          Q       (BY MR. CONWELL:)  When's the last time you had  
15 spoken to her?

16          A       Maybe about five or six years before that.

17          Q       Did you do anything in the Florida lawsuit to  
18 determine whether or not the allegations regarding the  
19 pornography were true?

20          A       Yes, we did.

21          Q       And did you -- you took the deposition of  
22 Mr. Carbone?

23          A       Yes.  We took the deposition of Mr. Carbone and we  
24 also asked for the computer files and the computer records in  
25 order to -- to investigate that -- that it was coming from his

1 computer.

2 Q And did they provide them to you?

3 A No, they did not.

4 Q And do you recall that the pornographic e-mails were  
5 shown to him during his deposition?

6 A Yes, I recall that.

7 Q Okay. And have you seen those pornographic e-mails  
8 as being exhibits here in this case?

9 A Yes, I have seen them.

10 MR. CONWELL: Can you take a look at Exhibit 1591.2.  
11 (Exhibit 1591.2 marked for identification.)

12 Q (BY MR. CONWELL:) And are those those e-mails?

13 A Yes.

14 MR. CONWELL: Okay. And we offer 1591.2.

15 THE COURT: Any objection?

16 MR. SCHNEIDER: I -- can I see 1591.2? I mean, is  
17 that on the screen? I don't see anything.

18 THE COURT: The fire hydrant?

19 MR. CONWELL: No. It's -- it's all the e-mails in  
20 one exhibit.

21 MS. HILAIRE: Don't you have the exhibit book?

22 The exhibit book is right in front of him.

23 MR. CONWELL: Yeah. All the exhibits have been  
24 exchanged, your Honor. May I furnish him --

25 THE COURT: Does defense counsel have a copy of your

1 exhibit book?

2 MS. HILAIRE: Absolutely.

3 MR. CONWELL: Yes, they do.

4 THE COURT: Open the book.

5 We're going to take our break, ladies and gentlemen,  
6 15 minutes. Let's come back at roughly ten after the hour.

7 Remember the admonition.

8 THE COURTROOM DEPUTY: All rise.

9 (Open court out of the presence of the jury.)

10 THE COURT: So if you want it on the record, then,  
11 okay, do it quickly.

12 MR. SCHNEIDER: I will do it quickly.

13 THE COURT: Okay.

14 MR. SCHNEIDER: Your Honor, we don't know what  
15 volume of these kinds of materials the plaintiff plans to  
16 present, but it seems excessive. The witness has made it clear  
17 what was being talked about. Do we need the jury to see, you  
18 know, 150 examples?

19 THE COURT: You all brought a Beacon's moving van  
20 full of documents in here for some reason. What was that  
21 reason? Is it to move all this crap into evidence?

22 MR. SCHNEIDER: Your Honor --

23 THE COURT: I don't know what your plan was. And  
24 besides that, I told you all to go through these exhibits in  
25 advance.

1 MR. SCHNEIDER: And --

2 THE COURT: Why are we now with every single exhibit  
3 having a dispute?

4 MR. SCHNEIDER: Well, your Honor, we objected to  
5 that exhibit. And when you asked about the volume of  
6 materials, this is, obviously, not our materials.

7 THE COURT: Oh, but some of these objections are  
8 just completely specious, all right? Prejudicial, that's kind  
9 of the way it is.

10 MR. SCHNEIDER: Right.

11 THE COURT: They're not going to be presenting  
12 anything in their lawsuit that's laudatory to your clients or  
13 your position. Is that a surprise that it's going to be  
14 prejudicial? But is it probative? Oh, yes, it's quite  
15 probative.

16 MR. SCHNEIDER: Thank you, your Honor.

17 THE COURT: Okay. Please -- you know, you're going  
18 to have plenty of time this afternoon when we break -- get the  
19 exhibit thing worked out. Maybe it's even necessary and  
20 advisable that you share with defendants what exhibits you plan  
21 on using the next day so that they can get all this stuff  
22 together, 'cause this is an absolute mess.

23 (A recess was taken.)

24 THE COURT: All right. Jury's present. All counsel  
25 and the parties are present.

1 MS. ROSSETTI: Your Honor, all counsel's not  
2 present. I think they just stepped out for a minute. May I  
3 run out and get them?

4 THE COURTROOM DEPUTY: They were just here.

5 THE COURT: Now all counsel are present.

6 Dr. Castillo has returned to the witness stand. When we  
7 left off, there was some dispute over the exhibit. Where do we  
8 stand now?

9 MR. SCHNEIDER: We do not have an objection, your  
10 Honor.

11 THE COURT: It'll be received.

12 (Exhibit 1591.2 received into evidence.)

13 THE COURT: All right. Continue.

14 Q (BY MR. CONWELL:) So I'd like to direct your  
15 attention to the first page which is on the screen, the  
16 computer screen, if you can just look at the computer screen.

17 Do you see there the e-mail from William Carbone  
18 dated February 12, 2009, 4:50 P.M., "Sometimes I just do not  
19 understand my wife"?

20 A I see that.

21 Q And now is this one of the pornographic e-mails that  
22 Mr. Carbone had sent during work hours at AAPS?

23 A Yes, sir.

24 Q Okay. And if you look at the second page of the  
25 exhibit, you'll see it says, "Sometimes I just do not



1 understand my wife. My neighbor was out training her dog" --  
2 can you look at the folder there in front of you, Dr. Castillo,  
3 the -- look at the second page, just the second -- page 2. It  
4 says, "And guess what? I got yelled at for staring."

5 See that on page 2 of the document?

6 THE COURTROOM DEPUTY: The numbers are at the  
7 bottom. Right there.

8 Q (BY MR. CONWELL:) Tell you what. Let's just stick  
9 with the computer screen. That'll be easier.

10 A Just a few of these, unfortunately.

11 Q Let's look at the computer screen. Okay. And  
12 then -- and then if you scroll down the page, then it's got a  
13 photograph here of a woman urinating on a fire hydrant. So you  
14 understand that we, for purposes of this trial and for decency,  
15 have blocked out with a little black box certain things on the  
16 e-mail so that it's not exactly the same as it was when  
17 Mr. Carbone was sending it out?

18 A Yes, I understand that.

19 Q The women's vaginas and so forth.

20 A Yes, sir.

21 Q Okay. Now, why is that e-mail of concern to you as  
22 a member of the Board of Directors -- as a former member of the  
23 Board?

24 A It's degrading to women. I've got -- I've got four  
25 daughters and two foreign exchange daughters and, I mean, I

1 would not want them treated this way. I would not like anyone  
2 looking at them this way and I would not like anyone thinking  
3 of them in this manner.

4 Q How would you feel about your CEO looking at it in  
5 this manner and sending this to other people in the  
6 organization?

7 A It's absolutely wrong. It's just -- it's wrong.

8 Q Do you -- now, do you recall there was a photo -- if  
9 we can move on to the next one -- of a woman in a hospital bed?

10 A Yes, I recall this one.

11 Q And was it a particular concern to you that there  
12 was a photograph sent, a pornographic image sent of a naked  
13 woman with her legs spread sitting in a hospital bed?

14 A Yes, sir.

15 Q Why?

16 A Well, I'm not real sure exactly who took the  
17 picture. Was it a physician that was taking this picture?  
18 Was -- I believe it was a physician that was -- had sent it to  
19 Mr. Carbone.

20 Q Was it a member of the Board of Directors?

21 A It was a member of the Board of Directors. And  
22 it -- you know, it's -- it breaks all trust amongst the  
23 physician and the patient. I would hate to think that my  
24 doctor was someone that was involved in this type of activity.

25 Q Let's move on to the next one. Do you recall that

1 there were e-mails sent regarding or suggesting inappropriate  
2 sexual relationships with teens?

3 A Yes, sir.

4 Q Underage minors?

5 A Yes.

6 Q And you see this, it says, "Jailbait"?

7 A Yes, sir.

8 Q And then down below that there's another -- you can  
9 scroll down -- and see the one "Twins"?

10 A Yes, sir.

11 Q "Four tits are better than two"?

12 A Yes, sir.

13 Q And then that's from a Web site weloveteengirls.com.  
14 How did you feel about your CEO getting e-mails from  
15 weloveteengirls.com like this?

16 A Uhm, well, A, I didn't like seeing that he was  
17 getting any pornographic e-mails, and especially when it dealt  
18 with underage --

19 MR. KRUSHKOV: Objection. Lack of foundation.

20 THE COURT: His feelings? His feelings are a lack  
21 of foundation?

22 MR. KRUSHKOV: Your Honor, he said that these are  
23 underage girls and there's nothing to suggest that they're  
24 underage. Teens can be 18, 19, and that's legal age.

25 THE COURT: How about the name of the site? Would

1 that might suggest it? Overruled.

2 Go on.

3 THE WITNESS: I -- again, as the counsellor pointed  
4 out, these are -- we don't know the age of these girls, but,  
5 obviously, they're in their teens.

6 Q (BY MR. CONWELL:) How did you feel about the other  
7 one next to that? There's a girl near locker -- school lockers  
8 that says, "Every male teacher said they contemplated the  
9 consequences." How did you feel about your CEO getting e-mails  
10 and sending out e-mails like that?

11 A Again, it's -- it's -- obviously, it's an underage  
12 girl.

13 Q And did that cause you concern about what would  
14 happen to the organization if this sort of information was  
15 not -- excuse me -- was discovered and made available to people  
16 who compete with the AAPs for rights to be board-certifying  
17 organizations before medical boards?

18 A I was concerned about this.

19 Q Can we go to the next slide in. Again, we've  
20 blocked this out, but this slide is the one called Twister.  
21 You recall this also was sent by another member of the Board of  
22 Directors to Mr. Carbone?

23 A Yes, sir.

24 Q And he forwarded that on to Timothy Bell?

25 A Yes, sir.

1 Q And again, these girls certainly look very young.  
2 Was that a concern to you?

3 A Yes, sir.

4 Q Let's go on down, next one. Do you recall there  
5 were also racist e-mails sent to you?

6 A Yes, I remember this.

7 Q Is this one of them that -- excuse me -- sent to  
8 Mr. Carbone?

9 A Yes.

10 Q Is this one of them?

11 A Yes, it is.

12 Q And was it a current concern to you that e-mails  
13 like this were being exchanged among Board members with your  
14 CEO?

15 A Yes, it was a concern.

16 Q How did you think that would affect your ability to  
17 get board -- to get recognized in the different states if it  
18 was discovered that this sort of thing was happening at AAPS?

19 A It would hurt our -- it would hurt any of the  
20 abilities for us to do this because this type of racism is --  
21 really is wrong. We treat all patients of all different ages  
22 and races and creeds and religions, and to find that these type  
23 of e-mails were going out just --

24 Q Did you think the Board needed to do something about  
25 this?

1 A Most definitely.

2 Q Is that why you spoke up?

3 A Yes, sir. I had to do the right thing.

4 Q Did you ever think that you would end up being  
5 suspended and investigated for bringing this to their  
6 attention?

7 A It never crossed my mind.

8 MR. CONWELL: Let's look at Exhibit 1060.

9 (Exhibit 1060 previously marked for identification.)

10 Q (BY MR. CONWELL:) Did you end up obtaining a copy  
11 of the Cassandra Newby complaint against AAPS?

12 A Yes. I've seen it.

13 Q Okay. And is that the -- is that 1060? Is that the  
14 complaint?

15 A Yes, it is.

16 Q And did you read the allegations in the complaint of  
17 sexual harassment by Mr. Carbone and, therefore, by AAPS?

18 A Yes, I have.

19 Q Okay. And -- excuse me -- can you turn to page 3 of  
20 that document, Dr. Castillo?

21 A Yes, sir.

22 Q And paragraph 17, it says, "Castillo" -- or,  
23 "Carbone repeatedly referred to plaintiff as an old bitch and  
24 an old cow"?

25 A Yes, I see that.

1 Q In paragraph 18 he openly referred to plaintiff as,  
2 "A bitch and a cunt"?

3 A Yes, I see that, sir.

4 Q And that he told an applicant that he wanted "young  
5 blood running around the -- running the certification  
6 department"?

7 A I see that, sir.

8 Q And the next paragraph that "physicians respond more  
9 to a man in this position as opposed to a woman"?

10 MR. KRUSHKOV: Your Honor, objection. Document  
11 speaks for itself.

12 THE COURT: That's all he's doing is reading.

13 Q (BY MR. CONWELL:) So you saw that as well?

14 A Yes, I saw that, sir.

15 Q Now -- and were you aware that AAPS immediately  
16 settled this lawsuit?

17 A Yes.

18 Q Did -- look at paragraph 22.

19 A I see that, sir.

20 Q Can you enlarge 22?

21 It says (Reading:)

22 "In addition, on more than one occasion  
23 Carbone exposed plaintiff to pornographic,  
24 even racially-biased pictorial e-mails and  
25 items placed on AAPS's share drive. These

1 pictures included women with large bare  
2 breasts, women with their genitals and  
3 back sides exposed."

4 You see that?

5 A Yes, I do.

6 Q Now, what was -- did you have any concern about  
7 sexual harassment and gender discrimination at AAPS?

8 A Yes, sir.

9 Q And why would -- why is that a concern to you as a  
10 member and as a former Board member?

11 A As a member, I was concerned about it because  
12 there's -- there's numerous reasons. Number one -- all  
13 right -- it's wrong. Discrimination against women is wrong.  
14 Discrimination against age is wrong. And this type of  
15 activity, if it was learned by our membership, they would  
16 realize that the organization was also at risk for lawsuits.  
17 The hostile work environment was created.

18 I own my own practice in Beaver Dam, Wisconsin, and  
19 we have to abide by all of the same rules that any other  
20 business would for human resource, and this is totally outside  
21 of the normal protocol to be able to show this type of stuff or  
22 do these things.

23 Q And why did you report -- or why did you feel you  
24 needed to report this to the Board and have the Board  
25 investigate?



1           A           Because basically the Board is the ultimate  
2 authority over the organization. The Board employs the CEO,  
3 the Director of Finance and Operations, or legal counsel. So  
4 basically the Board is the one that would have to take action.

5           Q           Okay. And did you believe that you had a duty as a  
6 member of the Board to investigate this?

7           A           Most definitely.

8           MR. CONWELL: Your Honor, we offer Exhibit 1060. I  
9 don't know if I had offered that or not.

10          THE COURT: Any objection?

11          MR. SCHNEIDER: No objection, your Honor.

12          THE COURT: Received.

13          (Exhibit 1060 received into evidence.)

14          MR. CONWELL: So let's look at Exhibit 1020.

15          (Exhibit 1020 previously marked for identification.)

16          Q           (BY MR. CONWELL:) Now, we'd talked earlier about  
17 the Federal Election Commission and the federal election law  
18 issue that you had reported to Dr. McCann in 2010. Do you  
19 recall that?

20          A           Yes, sir.

21          Q           And at that point it was an allegation. Did you  
22 later see that the AAPS had entered into a conciliation  
23 agreement with the election -- the Federal Election Commission?

24          A           Yes, sir.

25          Q           And is this that agreement?

1 A Yes, it is.

2 Q That agreement was -- or this stamp on that says  
3 March 24, 2011.

4 A Yes, sir.

5 Q So this is sometime after you brought the  
6 allegations to the attention of the Board?

7 A Yes, sir.

8 Q Sometime after they suspended you and started --  
9 told you they were going to investigate you instead of Montes?

10 A That is correct.

11 Q And then can you turn to the third page of this  
12 document?

13 A Yes, sir.

14 Q And look at Roman Numeral V.

15 A Yes, sir.

16 Q And says, "Roman Numeral V, No. 1, Respondents," and  
17 it says, "American Association of Physician Specialists, Inc.,  
18 violated 2 U.S.C. 441b(a) by making a prohibited corporate  
19 contribution."

20 You see that?

21 A Yes, I do.

22 Q And below that, paragraph B, "American Association  
23 of Physician Specialists PAC and Stephen Montes in his official  
24 capacity as treasurer violated 2 U.S.C. 441b(a) by receiving a  
25 prohibited corporate contribution."

1                   You see that?

2           A       Yes, sir.

3           Q       And then it goes on and talks about other violations  
4 that they'd found. Did this -- is this verifying the  
5 allegation that you brought to the attention of David McCann  
6 and requested an investigation of in 2010?

7           A       Yes, sir.

8           MR. CONWELL: Take a look at Exhibit 1719.

9                   (Exhibit 1719 previously marked for identification.)

10          MR. CONWELL: 1719.

11          And, your Honor, we're offering Exhibit 1020 which was the  
12 Federal Election Commission conciliation agreement.

13          THE COURT: Any objection?

14          MR. SCHNEIDER: No objection, your Honor.

15          THE COURT: Received.

16                   (Exhibit 1020 received into evidence.)

17          MR. CONWELL: And also, your Honor, we had offered  
18 before 1718 and 1591. I didn't note if they were admitted or  
19 not. 1591 was the one with the pornographic e-mails and the  
20 racist e-mails. I think you'd overruled their objection, but I  
21 don't know if they've been received in evidence.

22          THE COURT: Anything -- so far everything that's  
23 been offered has been received.

24          MR. CONWELL: Okay. Thank you.

25          Q       (BY MR. CONWELL:) All right. So -- so do you

1 recognize Exhibit 1719?

2 A Yes, I do.

3 Q And this document is from the American Counsel for  
4 Continuing Medical Education, known as the ACCME?

5 A Yes, sir.

6 Q Am I right?

7 A That's correct.

8 Q Now, what does the ACCME do?

9 A ACCME sets the standards and monitors all of the  
10 organizations that are accredited to give continuing medical  
11 education. So they -- some of the things that they do, they  
12 make sure that the educational programs that are put on provide  
13 information that will enhance the physician's knowledge, that  
14 will improve the quality of care towards the patients, and also  
15 that they are unbiased, that there is no funds or that the  
16 lecturers are not being paid by a medical device company or a  
17 drug company.

18 Q Okay. And after you brought the allegations to the  
19 attention of David McCann calling for an investigation on this,  
20 did you subsequently obtain a copy of this letter?

21 A Yes, I did.

22 Q And let's look at the first paragraph. First it  
23 says, "Dear Ms. Berg." Who is Esther Berg?

24 A Esther Berg was the director of the CME meetings and  
25 what was called recruitment and retention, and also she was the

1 liaison between AAPS and the ACCME.

2 Q And was she staff?

3 A She was staff.

4 Q Did she report to Bill Carbone?

5 A Yes, she did.

6 Q Who was the chair of the CME committee?

7 A There were two co-chairs, Dr. Steve Montes and  
8 Dr. Ken Flowe.

9 Q Okay. And in the first paragraph it says, "At its  
10 December 2009 meeting, the Accreditation Council For  
11 Continuing" -- could you enlarge that, please, just that first  
12 paragraph?

13 We'll start again (Reading:)

14 "At its December 2009 meeting the  
15 Accreditation Counsel for Continuing  
16 Medical Education took action on the  
17 accreditation review of your organization.  
18 The ACCME's decision was probation," and  
19 that's bolded.

20 Now, were you on the CME committee?

21 A Yes, I was.

22 Q Was this ever disclosed to you?

23 A No, it was not.

24 Q And was this one of the things that you had  
25 called -- well, was the issue about whether or not you were

1 complying with CME requirements one of the things that you had  
2 asked David McCann to have the Board investigate?

3 A Yes, sir.

4 Q So did this verify that the allegations that had  
5 been made to you were true?

6 A Yes, it did.

7 Q And what is your recollection of why they were put  
8 on probation?

9 A They were put on probation for --

10 MR. SCHNEIDER: Objection. It lacks foundation.

11 THE COURT: "What's your recollection." Overruled.

12 THE WITNESS: My recollection was that they were put  
13 on probation for failing to be compliant with the number of  
14 rules and regulations in order to be found to be accredited in  
15 good standing, and those were also pointed out in this letter.

16 Q (BY MR. CONWELL:) Okay. So if you can turn to  
17 page 6 of the letter. Do you recall there being findings of  
18 the ACCME regarding potential conflicts of interest?

19 A Yes.

20 Q And if you look on page 7 under Noncompliance, it  
21 says, "The provider" -- under C7, says, "The provider does not  
22 develop activities, educational inventions" -- excuse me --  
23 "interventions independent of commercial interest."

24 A Yes.

25 Q And then -- are you with me?

1 A Yes, I do see that.

2 Q And then down the page in the same block it says  
3 (Reading:)

4 "The provider did not disclose to learners  
5 the relevant financial relationships of  
6 all persons who control content,  
7 including, for example, faculty, item  
8 writers, reviewers, etc."

9 So what do you understand that to be  
10 saying regarding whether -- or what the  
11 AAPS was failing to do to be in  
12 compliance?

13 A They were failing to reveal any commercial interests  
14 and moneys that might be transferred.

15 Q And who was in charge of those moneys for that  
16 committee?

17 A The co-chairs, Dr. Stephen Montes and Dr. Ken Flowe.  
18 Primarily Dr. Montes.

19 Q Okay. And did Montes -- Dr. Montes remain on that  
20 committee?

21 A Yes, he did.

22 MR. CONWELL: Was he -- well, let's move on to the  
23 next exhibit, 1801.

24 (Exhibit 1801 previously marked for identification.)

25 MR. SCHNEIDER: Your Honor, we object to questions

1 concerning this document at this time in the litigation.

2 MR. CONWELL: What's the basis?

3 Your Honor, this is a public tax return. Anybody --

4 THE COURT: This is for the violations of the  
5 federal election laws?

6 MR. CONWELL: No. This one, your Honor, is payments  
7 to Bob Cerrato by the AAPS.

8 THE COURT: A volunteer?

9 MR. CONWELL: Yes.

10 THE COURT: Okay. Overruled.

11 Q (BY MR. CONWELL:) Okay. Do you recall obtaining  
12 this Return of Organization Exempt from Income Tax -- basically  
13 an income tax return for a nonprofit for AAPS for the year  
14 2010?

15 A Yes, sir, I've seen this.

16 Q And that was after you had reported to Mr. McCann --  
17 or Dr. McCann the allegation that there were payments being  
18 made to a volunteer by the AAPS --

19 A Yes, sir.

20 Q -- for their volunteer work?

21 A Yes.

22 Q And do you recall using this document in the  
23 depositions taken in the Florida case?

24 A Yes, I do.

25 Q And the AAPS agreeing that this was their return and



1 an accurate statement, contains accurate information?

2 A Yes, sir.

3 Q Turn to the last page of this document, very last  
4 page.

5 A Yes, sir.

6 Q See this section, Business Transactions Involving  
7 Interested Persons?

8 A Yes, sir.

9 Q Why don't you look at your screen. I've got it up  
10 on the screen.

11 A I've got it. I see that, sir.

12 Q And in this case the name of the interested person  
13 is Robert Cerrato?

14 A That is correct.

15 Q And his relationship is described as an officer?

16 A That is correct.

17 Q And what's the amount of the transaction?

18 A \$40,000-plus.

19 Q Okay. And description of transaction was AAPS  
20 Foundation Officer?

21 THE COURT: Look at your screen.

22 THE WITNESS: That is not showing up on the screen.

23 THE COURT: Look at your screen. You can see what  
24 we're seeing.

25 THE WITNESS: Yeah. There we go. \$40,110, and he

1 was -- the description of transaction was an AAPS Foundation  
2 Officer.

3 Q What does that mean?

4 A That means that money from the nonprofit AAPS  
5 foundation was being transferred and paid to him by the  
6 American Association of Physician Specialists.

7 Q Okay. And so what was the -- what was the  
8 foundation? What is that?

9 A Foundation was a separately incorporated  
10 organization to receive money for the -- in its documents was  
11 to -- for continuing medical education. So we were supposed to  
12 use that money to be able to provide education to the  
13 physicians in our CME meetings and so on.

14 Q And so were you concerned when you saw that the  
15 money was being used instead to pay Dr. Cerrato?

16 A I was concerned that it was being used to pay  
17 Dr. Cerrato for work on the foundation from the AAPS money and  
18 not from the foundation as well. In other words, there were  
19 two violations here. He was being paid for his volunteer  
20 service and then he was -- there was also a transfer of funds  
21 between these two separate organizations.

22 MR. CONWELL: Okay. Now, we offer 1801.

23 MR. SCHNEIDER: Yeah, your Honor, we object beyond  
24 that one page.

25 THE COURT: And why is that? What is the one page

1     you're referring to?

2                 MR. SCHNEIDER:   The one page that --

3                 THE COURT:   The last page or the first one?

4                 MR. SCHNEIDER:   That page, the one that's on the  
5     screen now.   I --

6                 THE COURT:   Is that the one you object to?

7                 MR. SCHNEIDER:   No.   That's the one I don't object  
8     to.

9                 THE COURT:   All right.   What about the first page  
10    that simply identifies the filer?

11                MR. SCHNEIDER:   Oh, it identifies a good deal more  
12    than that if we're looking at the same document.

13                THE COURT:   Does it?   All right.

14                MR. CONWELL:   Your Honor, I am fine with just  
15    identifying -- or if they'll stipulate to the filer and/or  
16    redacting any other financial information on the first page and  
17    offering the exhibit that way.

18                THE COURT:   Okay.   I just simply want it to be  
19    placed in some sort of context.   But would you be satisfied if  
20    everything but the name of the filer is redacted off of the  
21    first page?

22                MR. SCHNEIDER:   And we're just talking about the  
23    first page --

24                THE COURT:   Just the first page.

25                MR. SCHNEIDER:   -- and that one being submitted?

1 THE COURT: Yes.

2 MR. SCHNEIDER: No, I have no objection.

3 THE COURT: All right. That's the way it'll be  
4 received then.

5 (Exhibit 1801 received into evidence.)

6 MR. CONWELL: All right.

7 Q (BY MR. CONWELL:) Now, Dr. Castillo, were the  
8 suspensions against you and Dr. Geller and Dr. Klein ever  
9 lifted?

10 A Yes, they were.

11 Q What happened?

12 A In -- on November 2nd, 2011, there was a hearing  
13 before Judge Nielsen in Tampa, Florida, in which he -- the  
14 court ordered AAPS to lift our suspensions. And then in  
15 January 17th of 2012 -- I believe it's 17th -- there was a  
16 written order from Judge Nielsen.

17 MR. CONWELL: And can you look at Exhibit 1758?

18 (Exhibit 1758 previously marked for identification.)

19 THE WITNESS: Yes, sir.

20 Q (BY MR. CONWELL:) Okay. And what is that?

21 A This is an order granting in part and denying in  
22 part the plaintiff's motion for partial summary judgment on  
23 Count 3. This is the one that lifted our suspension because of  
24 violation of the laws of Florida and the AAPS bylaws.

25 MR. SCHNEIDER: Your Honor, we object to this

1 testimony. It is not final judgment --

2 THE COURT: Sustained.

3 MR. SCHNEIDER: Thank you.

4 Q (BY MR. CONWELL:) Okay. And the court ordered the  
5 reinstatement --

6 MR. SCHNEIDER: Objection.

7 THE COURT: Can he finish?

8 MR. SCHNEIDER: The objection --

9 THE COURT: Can he finish his question?

10 MR. SCHNEIDER: Certainly.

11 Q (BY MR. CONWELL:) -- the court ordered AAPS to  
12 reinstate you to full membership rights?

13 MR. SCHNEIDER: Objection.

14 THE COURT: Overruled.

15 THE WITNESS: Yes.

16 Q (BY MR. CONWELL:) And the same for Dr. Geller and  
17 Dr. Klein?

18 A Yes, sir.

19 MR. CONWELL: Okay. We offer Exhibit 1758.

20 MR. SCHNEIDER: We object to this document that the  
21 judgment is nonfinal. The case is still pending.

22 THE COURT: Four years later?

23 MR. SCHNEIDER: Yes. I think the witness would  
24 confirm that.

25 THE WITNESS: No, actually I would be more than

1 happy to say that it was taken to appeal and upheld.

2 MR. SCHNEIDER: Your Honor, this litigation is still  
3 pending.

4 THE WITNESS: But this --

5 THE COURT: We're only talking about this case.

6 MR. SCHNEIDER: We are talking about that case.

7 MR. KRUSHKOV: It is still pending. I'm the  
8 attorney on that case. I can very clearly tell you it is still  
9 pending.

10 THE COURT: This is very strange. We will hold off.

11 MR. CONWELL: I'll explain it, your Honor, if I may?  
12 This is a --

13 MR. SCHNEIDER: I'd rather it not be explained in  
14 front of the jury.

15 THE COURT: That's all right. That's all right.  
16 We'll deal with this later.

17 MR. CONWELL: Okay. So take a look at Exhibit 1333.  
18 (Exhibit 1333 previously marked for identification.)

19 Q (BY MR. CONWELL:) What is that?

20 A This is the first amended answer and affirmative  
21 defenses and counterclaims against Drs. -- excuse me --  
22 doctor -- myself, Dr. Klein, and Dr. Geller.

23 Q Okay. And were defendants being added at that time  
24 through that amended counterclaim?

25 A Yes. Counter-defendants Dr. Patricia Stewart and

1 her husband, Dr. Okerblom, Dr. Leslie Radentz, Dr. Richard  
2 Cressey, and someone named Michael Destefano, and John Does 1  
3 through 10, and Jane Does 1 through 10.

4 Q Okay. And what is the date of the document?

5 A I believe this was somewhere in -- I don't see the  
6 date on the front here.

7 Q Do you recall that this was filed in March or April  
8 of 2012?

9 MR. SCHNEIDER: Objection. Leading question.

10 THE COURT: Sustained.

11 Q (BY MR. CONWELL:) When do you recall --

12 THE COURT: There's no date on the last page?

13 THE WITNESS: I'm looking for the last page. I'm  
14 sorry, your Honor.

15 MR. SCHNEIDER: Your Honor, there actually is no  
16 date.

17 MR. CONWELL: I can -- I can take care of that  
18 later, your Honor.

19 THE COURT: But that -- okay.

20 MR. CONWELL: So take a look now at Exhibit 1498.

21 (Exhibit 1498 previously marked for identification.)

22 THE WITNESS: Okay.

23 MR. CONWELL: Hang on to the one you've got. Hang  
24 on to 1333. I want to look now at Exhibit 1498.

25 Now, your Honor, this is a May 8, 2012, charging document

1 by which Patty Stewart, Dr. Patricia Stewart, was charged by  
2 the AAPS. And there's no objection been lodged as to this. In  
3 fact, I think it's one of their exhibits. So we're offering  
4 Exhibit 1498.

5 MR. SCHNEIDER: That's fine. We didn't object to  
6 1333.

7 MR. CONWELL: Well, then I offer both of them, your  
8 Honor.

9 THE COURT: All right. They are both received, 1333  
10 and 1498.

11 (Exhibits 1333 and 1498 received into evidence.)

12 Q (BY MR. CONWELL:) So Dr. Castillo, do you see that  
13 this charging document has the amended counterclaim attached to  
14 it?

15 A Yes, sir.

16 Q So that 1333 is part of 1498, the counterclaim. The  
17 claims that were brought against Dr. Patricia Stewart were  
18 attached to that charging document. Do you see that?

19 A Yes, sir.

20 Q So now in this counterclaim, in this claim against  
21 Dr. Stewart, there are a number of admission -- oral  
22 allegations that she conspired with you to harm the AAPS. Did  
23 you and Patricia Stewart ever conspire to harm the AAPS?

24 A No, sir.

25 Q You said that she had called you on the telephone



1     sometime in the spring of 2011 and asked you why you were suing  
2     the AAPS; is that right?

3             A         That is correct.

4             Q         And you told her about the suspensions and you said,  
5     "I had no choice," and so forth?

6             A         Yes, sir.

7             Q         Now, from that time up to the time that she was sued  
8     and then sent this charging document, had you been in  
9     communication with Dr. Stewart?

10            A         Not that I can recall.

11            Q         Had you been conspiring to do anything with her?

12            A         No, sir.

13            Q         Did anybody ever take your deposition up through  
14     March or April -- or let's say up to May 8th of 2012, in the  
15     lawsuit that was existing between you and the AAPS and ask you  
16     whether or not you were conspiring with Dr. Stewart to do  
17     anything?

18            A         No, sir.

19            Q         Did you ask them to take your deposition, again?

20            A         Yes, sir.

21            Q         Did they depose Dr. Castillo -- I'm sorry --  
22     Dr. Geller or Dr. Klein?

23            A         No, sir.

24            Q         Did AAPS send you a charging document?

25            A         Yes, they did.

1           Q       Did they threaten you with a disciplinary hearing in  
2 approximately May of 2012?

3           A       Yes, they did.

4           Q       Did it look pretty much like this one?

5           A       Yes, sir.

6           Q       And did you and Dr. Geller, Dr. Klein, and  
7 Dr. Cressey move for a temporary injunction?

8           A       Yes, we did.

9           Q       Were you present at a hearing in Florida on June 7th  
10 of 2012, where that motion -- your motion for a temporary  
11 injunction was granted?

12          A       Yes, sir.

13          Q       Do you recall whether Dr. Stewart participated in  
14 that?

15          A       Uhm, no.

16          Q       She did not; is that correct?

17          A       She did not, that's correct.

18          Q       And why were you requesting the temporary  
19 injunction?

20          A       Because we had already been granted our rights as  
21 members and the temporary -- the process that AAPS was  
22 following was violating our bylaws and our --

23               MR. KRUSHKOV: Objection. Legal opinion. Legal  
24 conclusions.

25               MR. CONWELL: Stating why he filed a motion for

1 temporary injunction.

2 MR. KRUSHKOV: There's an order issued that says  
3 what it says and --

4 THE COURT: I thought we talked about this.

5 MR. KRUSHKOV: I was just responding to Mr. --

6 THE COURT: You don't respond to anyone but me.

7 MR. KRUSHKOV: Absolutely, your Honor.

8 THE COURT: Overruled.

9 Your motivation is what he's asking about, all right?

10 MR. CONWELL: Right. Why you --

11 THE COURT: Your mindset.

12 THE WITNESS: Would you repeat the question for me,  
13 please?

14 Q (BY MR. CONWELL:) Why were you moving for a  
15 temporary injunction?

16 A I was moving for a temporary injunction because they  
17 intended to expel us from the organization without due process.

18 Q Okay. You got the similar letter to this May 8th  
19 letter. Take a look at the May 8th letter. You see in there,  
20 I believe it's on the third paragraph, it says that you have --  
21 you are permitted 15 minutes to defend yourself against  
22 approximately 160-page charging document?

23 A I see that, sir.

24 Q Did you feel like that was fair?

25 A No, sir.

1 Q Did they tell you who was going to be adjudicating  
2 your guilt or innocence?

3 A They did -- they did not in this document, no.

4 Q But --

5 A It was a meeting of the disciplinary committee, but  
6 we had no idea who was on that committee.

7 Q And were you concerned about whether or not the  
8 people on that disciplinary committee would be fair and  
9 impartial?

10 A Yes, sir.

11 Q Did you later -- well, I'll save that for a  
12 different witness.

13 So was the order that was entered that day, was it  
14 temporary? You recall that it was a order granting your motion  
15 for a temporary injunction?

16 A Yes, sir.

17 Q Okay. Let me move on from this.

18 Did you attend the AAPS annual meeting in June of  
19 2012?

20 A Yes, sir.

21 Q And where was it that year?

22 A The 2012 meeting was at Marina Del Rey in  
23 California.

24 Q And do you recall attending a meeting at the AAPS  
25 annual meeting at which Dr. Bob Cerrato was addressing the

1 attendees?

2 A Yes, I do.

3 MR. SCHNEIDER: Your Honor, can you turn the exhibit  
4 off while this other examination is pending?

5 THE COURT: Why is that?

6 MR. SCHNEIDER: Different focus right now. It's a  
7 moot point at this moment.

8 THE COURT: It's up to them.

9 Q (BY MR. CONWELL:) Okay. Do you recall attending  
10 that meeting?

11 A Yes, I do, sir.

12 Q And what happened at that meeting?

13 MR. SCHNEIDER: Objection. Overbroad.

14 THE COURT: Sustained.

15 Q (BY MR. CONWELL:) Did Bob -- Dr. Cerrato make  
16 statements during that presentation contending that Patty  
17 Stewart was attempting to destroy the AAPS?

18 MR. SCHNEIDER: Objection. Leading.

19 THE COURT: Can't have it both ways. Overruled.

20 THE WITNESS: Yes.

21 Q (BY MR. CONWELL:) And do you recall him showing a  
22 PowerPoint presentation?

23 A Yes, sir.

24 MR. CONWELL: Can we look at Exhibit 1525.

25 (Exhibit 1525 previously marked for identification.)

1 Q (BY MR. CONWELL:) And I'd like you -- is this the  
2 PowerPoint presentation?

3 A Yes, it is, sir.

4 Q Was Dr. Stewart in the room when this was taking  
5 place?

6 A No, sir.

7 Q Do you know if she was in the building?

8 A She was in the building, but she was not allowed to  
9 be in the room.

10 Q And turn to the page it's got identification number  
11 on it 22712.

12 A Yes, sir.

13 Q All right. Dr. Castillo, do you remember this being  
14 presented by Dr. Cerrato at the meeting of the AAPS?

15 A Yes, I do.

16 Q And it says here, "Dr. Patricia Stewart blog,  
17 March 29, 2012, history of bullies within the leadership of  
18 AAPS by Dr. Leslie L. Radentz."

19 Now, did you ever know Dr. Patricia Stewart to have  
20 a blog?

21 A No, she does not have a blog.

22 Q Does Dr. Radentz have a blog?

23 A Yes, she did.

24 Q Dr. Cerrato claimed to the delegates that  
25 Dr. Stewart had a blog that was posting information that was

1 against the AAPS?

2 A Yes, he stated that.

3 Q And then it goes on here and it talks about the  
4 history of bullies within the AAPS leadership.

5 Did you ever see anything indicating that  
6 Dr. Stewart had anything at all to do with what was presented  
7 to these members of the AAPS by Dr. Cerrato at this meeting  
8 claiming that she put it on a blog?

9 A I don't recall anything that would have indicated  
10 that she did that.

11 Q Okay. And then there's another page I want to show  
12 you just prior to that, "Dr. Patricia Stewart blog, June 17,  
13 2012, letter to Dr. Montes." And then it's got what purports  
14 to be a reproduction of a letter written to Dr. Montes by  
15 Dr. Stewart. Do you see that?

16 A Yes, I do.

17 Q And then it says -- its written, "Money is the root  
18 of all evil. Private profiteering within a nonprofit  
19 corporation is one evil root."

20 Do you see that?

21 A Yes, I see that.

22 Q And did Dr. Cerrato allege or make the accusation at  
23 this meeting in front of Dr. Stewart's colleagues that she was  
24 the author of this?

25 A Yes, he did.

1 Q Okay. And was she able to get inside that meeting  
2 and defend herself?

3 A No, she was not.

4 Q Did he also make a presentation -- include in that  
5 PowerPoint presentation e-mails that he claimed to be from  
6 Timothy Bell?

7 A Yes, he did.

8 Q Were these e-mails that you had seen before as part  
9 of your discovery and investigation in the Florida lawsuit?

10 A Yes, sir.

11 Q When and how did you get them?

12 A Through our -- through our lawsuit, through the  
13 discovery request of AAPS documents.

14 Q When you saw them, did you question whether or  
15 not -- did you question their authenticity?

16 A Yes, I did.

17 Q Why?

18 A Because there's so many things that was cut and  
19 paste. There was no identifying information as to who it came  
20 from, where it came from, and there were things that were said  
21 there that were attributed to me which I had never said.

22 Q Okay. And did you do anything in the Florida  
23 lawsuit to try to get the original computer files from AAPS to  
24 have them forensically examined to determine whether or not  
25 these were authentic or whether or not they'd been fabricated



1 by the AAPS?

2 A Yes. We --

3 MR. SCHNEIDER: Objection. Lacks foundation  
4 regarding this witness.

5 THE COURT: You're asking -- the question is whether  
6 or not he did anything.

7 MR. SCHNEIDER: I don't think that was the question.

8 THE COURT: (Reading:) "Did you do anything to  
9 inspect the Florida lawsuit to try to get the original computer  
10 files from AAPS to have them forensically examined to determine  
11 whether or not they were authentic?"

12 MR. SCHNEIDER: What I was referring to is he's not  
13 the counsel in that case, and if he's talking about him  
14 personally, it's not clear.

15 THE COURT: It's quite clear, "Did you do anything?"  
16 Overruled.

17 THE WITNESS: Yes, we did. We asked AAPS to provide  
18 us with the computers, with the computer files so that they  
19 could be forensically analyzed to determine the authenticity.

20 THE COURT: Hang on a sec. The question wasn't  
21 whether or not someone else on your behalf or a team. The  
22 question was did you do anything.

23 THE WITNESS: Thank you, your Honor.

24 THE COURT: Okay.

25 THE WITNESS: Yes. I instructed my attorney to get

1 the information necessary to authenticate these documents.

2 Q (BY MR. CONWELL:) And were the -- were the original  
3 computer files ever furnished to you or your counsel?

4 A No, they were not.

5 MR. SCHNEIDER: Objection. Lacks foundation.

6 THE COURT: All right. Sustained.

7 Q (BY MR. CONWELL:) Were you a part --

8 MR. SCHNEIDER: And move to strike the answer.

9 THE COURT: Not yet.

10 Q (BY MR. CONWELL:) Were you a part of the efforts to  
11 obtain those records?

12 A Yes, I was.

13 Q And as a participant in that lawsuit, as a party,  
14 both a plaintiff and a counter-defendant, were you reviewing  
15 records that came in from the court regarding requests that  
16 were being made on your behalf for these computer records and  
17 the objections lodged by these attorneys to those requests?

18 A Yes.

19 Q You were a part of that?

20 A I was part of that.

21 Q You actually saw their objections to producing these  
22 computer records?

23 A Yes, sir.

24 Q And did -- and did they produce the computer  
25 records?

1           A       No, they did not.

2           Q       So were you ever able to determine whether or not  
3 these were fabricated by the AAPS?

4           A       We were never able to authenticate these or tell  
5 whether they were fabricated or just -- we have no idea who  
6 they came from, where they came from, how they were received.

7           Q       Okay. On page 2696 of this document, there's a --  
8 do you recall that there was as part of this PowerPoint  
9 presentation, a presentation by Bob Cerrato to the members of  
10 the AAPS regarding these e-mails?

11          A       Yes, I recall that.

12          Q       And one of these, it purports to be an e-mail from  
13 Timothy Bell with no date on it, but it says, "I spoke with the  
14 immediate past president of the AAPS today, Tom Castillo. He's  
15 on board in a big way in getting rid of Carbone."

16                 Did you ever have a discussion with Mr. Bell in  
17 which you said, "I'm on board in a big way in getting rid of  
18 Bill Carbone"?

19          A       No, I did not.

20          Q       Then it says (Reading:)

21                 "After they, Klein, Geller, and Castillo,  
22 have the forces marshalled, enough docs  
23 signed up to overthrow Carbone, they're  
24 going to demand an emergency Board meeting  
25 in Tampa. Castillo is a Board member. He

1           will tell the Board that if Carbone is not  
2           ousted, that he will resign his position  
3           on the Board and report back to the Board  
4           of certification that he represents,  
5           surgery, why he resigned."

6           Did that ever happen?

7           A       No, sir.

8           Q       Has AAPS since June of 2012 attempted to expel you?

9           A       No, sir.

10          Q       Or otherwise discipline you?

11          A       No, sir.

12          Q       And are you currently a member in good standing with  
13   AAPS?

14          A       Yes, sir.

15                   MR. CONWELL: No further questions.

16                   THE COURT: Cross.

17                   MR. SCHNEIDER: Thank you, your Honor.

18                                   CROSS-EXAMINATION

19   BY MR. SCHNEIDER:

20          Q       First, Dr., I'd like to clarify. Do you go by  
21   Castillo or Castillo?

22          A       I've been living up in Wisconsin, so they've been  
23   calling me Castillo. But my -- the correct pronunciation of my  
24   name is Castillo.

25          Q       Is that your preference?

1 A Yes, sir.

2 Q Dr. Castillo, you have indicated that in October of  
3 2010, AAPS suspended your membership privileges, correct?

4 A That is correct.

5 Q Did you regard that as fair?

6 A No, sir.

7 Q And at the same time they -- AAPS suspended the  
8 privileges of Dr. Geller, correct?

9 A That is correct.

10 Q Dr. Geller is a man, isn't he?

11 A Yes, he is.

12 Q And in October of 2010, AAPS also suspended the  
13 membership privileges of Dr. Klein, correct?

14 A That is correct.

15 Q And Dr. Klein is also a man?

16 A That is correct.

17 Q And you regarded the lawsuit filed against you by  
18 AAPS as unfair as well, didn't you?

19 A That is correct.

20 Q You had indicated that you and your legal team had  
21 attempted to obtain the computer records of AAPS regarding the  
22 e-mail we just looked at supposedly from Mr. Bell?

23 A Yes, sir.

24 Q And you indicated those records, computer records,  
25 were not produced, correct?

1           A       The files necessary to authenticate these records  
2       were never produced.

3           Q       Okay. And no court order was ever issued to require  
4       their being produced, was there?

5           A       I do not recall. There was a number of issues that  
6       were not addressed in our lawsuit. As your counsel pointed  
7       out, this is kind of ongoing. The only thing that has been  
8       determined is that we were unjustly suspended.

9                   But I don't believe that I have seen an order from  
10      the court allowing us to continue with that discovery. We have  
11      tried to track that down, but there's been objections, the same  
12      way as you're objecting to seeing these. There were objections  
13      to us getting that information.

14          Q       And you understand certainly from this trial today  
15      that parties are entitled to make legal objections?

16          A       Yes, sir.

17          Q       And it's, as you've seen today, up to the court to  
18      either sustain or grant the objection or alternatively to  
19      overrule or deny the objection?

20          A       Correct.

21          Q       So to your knowledge, the court in Florida has never  
22      ordered that those records be produced, correct?

23          A       Correct.

24          Q       Thank you.

25                   You made reference to the FEC. That's the Federal

1 Election Commission?

2 A That is correct.

3 Q And you identified the conciliation agreement?

4 A Yes, sir.

5 Q And the conciliation agreement represents an  
6 agreement between the Federal Election Commission and AAPS?

7 A That is correct.

8 Q And that relates to the charges surrounding the  
9 transfer of funds?

10 A That is correct.

11 Q And do you recall whether there was a financial  
12 sanction issued against AAPS?

13 A Yes, sir.

14 Q You recall the amount?

15 A It was about \$5,700, I believe.

16 Q Thank you.

17 You've also testified concerning the ACCME  
18 probation?

19 A Yes, sir.

20 Q And that was probation, not a suspension, correct?

21 A That is correct.

22 Q And to your knowledge, AAPS has never been  
23 prohibited from putting on continuing medical education  
24 courses, has it?

25 A That's correct.

1 Q And that's because it was a probation and not  
2 suspension?

3 A That is correct.

4 Q You testified concerning allegations in Cassandra  
5 Newby's lawsuit. You recall that?

6 A Yes, sir.

7 Q And you understand that allegations are just that,  
8 allegations?

9 A That is correct.

10 Q They are not findings by any court, are they?

11 A No, sir.

12 Q So the mere fact that Ms. Newby made those  
13 allegations does not mean that those allegations are true, does  
14 it?

15 A They are allegations until proven.

16 Q So you would agree with me that until they are  
17 proven, they are simply allegations?

18 A That is correct.

19 Q And you thought that the process that was being  
20 employed relative to the investigations in May and June of 2012  
21 as to you were not being done fairly, correct?

22 A Correct. May I explain?

23 Q Uhm, I'm sure your counsel may ask you, but not  
24 right now.

25 A Okay.



1           Q       You thought it was unfair in part because you were  
2 given 15 minutes rather than an extended period of time to  
3 present your position?

4           A       That is part of it, correct.

5           Q       And you felt it unfair that Dr. Montes was a member  
6 of the disciplinary committee?

7           A       When I learned later on, yes.

8           Q       Okay. As of now you think that, don't you?

9           A       Oh, most definitely.

10          Q       Okay. Did you also think it was unfair for  
11 Dr. Maggio to serve on that committee?

12          A       I didn't know what his involvement was at the time,  
13 so I did not feel it was unfair.

14          Q       Has that changed?

15          A       He's dead.

16          Q       Yes, I understand that.

17          A       Okay.

18          Q       But has that changed?

19          A       That he would be -- I hate to speak against somebody  
20 who's passed away, but --

21          Q       Well, you didn't have any trouble with Dr. Montes,  
22 did you?

23          A       Ah, that's a good point. Yes, I would have trouble  
24 with it.

25          Q       With Dr. Maggio?

1 A Yes, Dr. Maggio and Dr. Montes.

2 Q And did you feel it was unfair for Dr. Montes to  
3 serve on that -- I'm sorry -- Dr. Wallace to serve on that  
4 panel?

5 A I didn't know Dr. Wallace well enough to make a  
6 judgment.

7 Q Since that time have you formed an opinion on that?

8 A Since that time I have not really had much dealings  
9 with Dr. Wallace. Matter of fact, I haven't had any dealings  
10 with members of AAPS since my suspension. I do not participate  
11 in leadership.

12 Q Okay. So to your knowledge, the following people  
13 were sent those May 8, 2012, notices with the first amended  
14 counterclaim attached: Yourself?

15 A Yes.

16 Q Dr. Cressey?

17 A Yes, sir.

18 Q Dr. Klein?

19 A Yes, sir.

20 Q Dr. Geller?

21 A Yes, sir.

22 Q Dr. Radentz?

23 A Yes, sir.

24 Q And Dr. Stewart?

25 A Yes, sir.

1           Q       And of them, Dr. Stewart we can see is a woman,  
2 correct?

3           A       That is correct.

4           Q       Thank you. And you know Dr. Radentz to be a woman?

5           A       Yes, sir.

6           Q       The other four people who were the subject of that  
7 correspondence and inviting them to participate in a  
8 disciplinary meeting were all men, weren't they?

9           A       One-third of them were women and two-thirds were  
10 men.

11          Q       Four men, two women?

12          A       That's correct.

13                 MR. SCHNEIDER: Thank you. I have no further  
14 questions.

15                 THE COURT: Redirect?

16                 MR. CONWELL: I have no redirect.

17                 THE COURT: You may step down, Dr. Thank you.

18                 THE WITNESS: Thank you, your Honor.

19                 THE COURT: May this witness be excused from this  
20 trial?

21                 MR. CONWELL: Yes, your Honor.

22                 THE COURT: All right. Thank you, sir. Head back  
23 to the snow.

24                 Your next witness.

25                 MR. CONWELL: Our next witness is Dr. Atwood Rice.

1 I think co-counsel has gone to get him.

2 **ATWOOD RICE, M.D., PLAINTIFF'S WITNESS, WAS SWORN**

3 THE COURTROOM DEPUTY: Please be seated.

4 Please state your name and spell your last name for the  
5 record.

6 THE WITNESS: My name is Atwood Rice.

7 THE COURTROOM DEPUTY: Spell it.

8 THE WITNESS: A-t-w-o-o-d, R-i-c-e.

9 THE COURTROOM DEPUTY: All right. Thank you.

10 DIRECT EXAMINATION

11 BY MS. HILAIRE:

12 Q Good afternoon, Dr. Rice. Can you see me?

13 A Yes.

14 Q Okay. How are you doing today?

15 A Fine, thank you.

16 Q Okay. Can you tell the jury your occupation,  
17 please?

18 A I am a physician, emergency physician primarily.  
19 I'm also an attorney and an Anglican priest.

20 Q Okay. And how long have you been a physician?

21 A Since 1977.

22 Q Do you specialize in any particular area?

23 A Emergency medicine.

24 Q Could you -- I know you have many degrees. Could  
25 you briefly tell the jury about your educational background?

1           A           Uhm, my education is -- started with Culver Military  
2 Academy and I graduated in '67. I went to Tulane University.  
3 I majored in history and chemistry. I graduated with dual  
4 degrees, bachelor of arts and bachelor of science in 1971.

5                   I went to seminary after that and I tried to proceed  
6 to become ordained in the Episcopal Church, and at that time  
7 the Episcopal Church was going through some turmoil that people  
8 with more orthodox Christian beliefs were not well-accepted.  
9 So a number of people suggested after I was already doing  
10 hospital chaplain work, I should apply to med school, which I  
11 did, and I was accepted at Tulane Med School.

12                   And I went to Tulane Medical School and -- on a dual  
13 degree program, a Master's of Public Health and M. D.,  
14 graduated from Tulane in '77 with both degrees.

15                   I did a partial internship which was called a  
16 rotating internship where you did multiple different  
17 specialties. And then I resigned that to do a fellowship and  
18 submission work in tropical medicine, and went to Indian  
19 Indonesia for that, came back and did a year of general  
20 surgery, decided I wanted to do microsurgery of the ear and did  
21 three years of ear, nose, and throat training for that, and  
22 developed a tremor which precluded me from doing microsurgery,  
23 and so I switched then to emergency medicine, and I've been in  
24 emergency medicine pretty much the whole time since 1984.

25           Q           Thank you. And where do you currently practice

1 medicine?

2 A I'm currently doing locum tenens work for different  
3 companies that place people in emergency rooms. I'm getting  
4 sort of towards the end of my career and I heard that the  
5 Veterans Administration needed physicians and the Indian also  
6 had shortages, so I requested placement at those kinds of  
7 facilities. So I've been working on an Indian reservation in  
8 Arizona recently and a VA in Tennessee.

9 Q Okay. And are you currently a member of AAPS?

10 A Yes, I am.

11 Q And when did you become a member?

12 A I believe I became a member in 2004.

13 Q Is there any particular academy within AAPS that you  
14 belong to?

15 A I belong to the Academy of Emergency Medicine.

16 Q Okay. And can you give me kind of an estimate as to  
17 how large the membership is with respect to your academy?

18 A Well, the Emergency Medicine Academy is the largest  
19 academy of AAPS. They have approximately 65 to 75 percent of  
20 the membership of the organization.

21 Q Okay. And can you explain to the jury why you  
22 specifically chose to join AAPS as your board-certifying  
23 organization?

24 A Well, a friend of mine who had been involved with me  
25 in another emergency medicine organization, Association of

1 Emergency Physicians, invited me to come to the conference that  
2 AAPS was having in New York City which had an emergency  
3 medicine track, but it also had a course in medical ethics.  
4 And I'd never been to an organization that sponsored a course  
5 in medical ethics at one of their regular meetings, and so I  
6 was really impressed with that and I signed up for that class.  
7 And I felt like that was -- you know, an organization that was  
8 promoting medical ethics must be a good -- really good  
9 organization to be a part of. So I joined that organization.

10 Q And can you briefly describe the formal positions  
11 that you've held at AAPS since you joined in 2004?

12 A Well, the formal positions I've held is governor of  
13 the Academy of Emergency Medicine, then membership chair of the  
14 Academy of Emergency Medicine, and finally I was elected to the  
15 Board of Directors in the whole organization.

16 Q Okay. And can you tell the jury what years you were  
17 on the Board of Director -- I'm sorry -- that you served as a  
18 member on the Board of Director?

19 A I served on the AAPS Board of Directors from August  
20 of 2011 till the end of May in 2012.

21 Q Okay. And have you ever testified on behalf of  
22 AAPS?

23 A Uhm, I testified on behalf of AAPS in a court case  
24 going on in New York concerning board recognition and the  
25 equivalence of AAPS boards to the American Osteopathic Boards

1 and the American Association of Physician Specialists Boards.  
2 I also testified before the Louisiana State Medical Board for  
3 the same issue of recognition and equivalency, and I also  
4 testified before the Texas State Medical Board for those  
5 things.

6 Q Okay. And when you were representing AAPS, what was  
7 the purpose that you were chose to provide this testimony?

8 A I'm sorry. Repeat the question.

9 Q Sure. What was the purpose that you were selected  
10 as an individual to represent the interests of AAPS while you  
11 provided this testimony?

12 A Uhm, I think I was selected because of my background  
13 as being a physician/attorney and being familiar with the  
14 issues. I had served on the Governmental Affairs Committee  
15 before being asked to appear before the Louisiana State Board,  
16 which was the first place I testified. And then I was asked to  
17 do the other two things, I guess probably because they thought  
18 I did a good job before the Louisiana State Medical Board.

19 Q Okay. And are you familiar with AAPS's code of  
20 ethics?

21 A Yes, I am.

22 Q And you testified earlier that one of the reasons  
23 you specifically chose AAPS was because of its high regard to  
24 ethics. Can you explain further what you meant by that?

25 A Well, I think medicine is a profession that is



1     esteemed because the people who are in it are supposed to be  
2     very ethical, placing patient interest first. And all of  
3     ethics is based on trust -- relationships of trust, and I felt  
4     like that was the most important aspect of AAPS. If a doctor  
5     and a patient don't have trust, then -- then the doctor can do  
6     everything right and it still won't have the same effect on the  
7     patient. And so I think that's very important.

8             I think trust is important and also in relationships  
9     with your peers. If you want to be able to refer to another  
10    physician in an area that you don't have expertise, you have to  
11    have trust with those physicians.

12            I think likewise trust amongst members of an  
13    organization when you're working for the same goals and trust  
14    for society at large. So the code of ethics of AAPS says that  
15    we're supposed to maintain the highest standards of personal  
16    conduct and the highest standards of medical ethics.

17            MS. HILAIRE: Thank you, and -- Dr. Rice.

18            On that point, your Honor, I'd like to mark for  
19    identification Exhibit No. 206.

20            (Exhibit 206 previously marked for identification.)

21            THE COURT: You said to mark a new exhibit or is  
22    there an exhibit that has been previously marked as 206?

23            MS. HILAIRE: No, your Honor. I'm sorry. I just  
24    want to introduce Exhibit 206.

25            THE COURT: Okay. All right.

1 MS. HILAIRE: If there are no objections, I'd also  
2 like to admit Exhibit 206.

3 MR. SCHNEIDER: We have no objection.

4 THE COURT: All right. It will be received.

5 (Exhibit 206 received into evidence.)

6 Q (BY MS. HILAIRE:) Dr. Rice, do you know what this  
7 exhibit is?

8 A This is the AAPS Code of Ethics.

9 Q And to your knowledge, where are these code of  
10 ethics published?

11 A Uhm, I believe they're published on the  
12 Association's Web site.

13 Q Okay. And could you please for the jury read the  
14 first three bullet points?

15 A (Reading:)

16 "As a member of the American Association  
17 of Physician Specialists, Inc., I pledge  
18 myself to maintain the highest standards  
19 of personal conduct" --

20 THE COURT: Dr. -- Dr. -- and this goes for  
21 everyone -- it's like when we read, we seem to speed up. We  
22 still have the court reporter. All right. Slow down.

23 THE WITNESS: Okay. I'm sorry.

24 (Reading:)

25 -- "maintain the highest standard of

1                   personal conduct; promote and encourage  
2                   the highest level of medical ethics in  
3                   medicine; maintain loyalty to the goals  
4                   and objectives of the American Association  
5                   of Physician Specialists, Inc."

6           Q       (BY MS. HILAIRE:) Did you read all three bullet  
7 points?

8           A       Yes.

9           Q       Thank you.

10                   Okay. Let's shift gears a bit. At some point in  
11 time did you learn that there had been suspensions of three  
12 physicians, Dr. Castillo, Geller, and Klein?

13           A       Yes, I did. I learned that I believe in January of  
14 2011.

15           Q       Okay. And once you became aware of that  
16 information, did you take any steps to look into the  
17 suspensions further?

18           A       Well, I attended, along with a lot of other members  
19 of my academy, a winter meeting in Tampa which involved both  
20 dealing with academy issues and writing exam questions for the  
21 certification examination for emergency physicians. And at  
22 that time I was informed that Robert Geller, who was our  
23 academy member of the Board of Directors, had been suspended.  
24 And we had one of our academy members who was -- at that time  
25 was on the Executive Committee, a Dr. Betsy Schenck, and she

1 told us that there were some charges against these physicians  
2 and that they were under investigation, and that's why that Rob  
3 Geller wasn't there. And I started asking some more questions.  
4 She said she couldn't talk about it while the investigation was  
5 going on.

6 And I began to ask her, I said, "I don't want to  
7 know the specifics of the investigation or the charges. I just  
8 want to know what the process was that was followed for  
9 suspending these people."

10 And she couldn't really explain except that the  
11 Executive Committee made an emergency decision about it.

12 And I said, "So who's in charge of the  
13 investigation?"

14 She didn't know.

15 How long was the investigation going to take?

16 She didn't know.

17 And so that was very alarming to me.

18 Q And based on those responses, what did you do next  
19 to get answers as to why these individuals were suspended?

20 A Well, when she didn't have any answers, I tried to  
21 get in touch with Dr. Geller and Dr. Castillo because I knew  
22 both of them and I reached Dr. Castillo. And he --

23 MR. KRUSHKOV: Objection. Hearsay, your Honor.

24 THE WITNESS: So I -- anyway I spoke with Dr. --

25 THE COURT: Hang on. Hang on. Hang on. "Tried to

1 get in touch with the doctors. I reached" -- not even a  
2 statement. Overruled.

3 Q (BY MS. HILAIRE:) You can continue, Dr.

4 A Anyway, I spoke with Dr. Castillo, and he told me  
5 that --

6 MR. KRUSHKOV: Your Honor, same objection. Hearsay.

7 THE COURT: You are getting there. Sustained.

8 THE WITNESS: He told me that --

9 THE COURT: Hang on.

10 THE WITNESS: -- he had been --

11 THE COURT: Hang on. Hang on. Hang on. Don't  
12 repeat the conversation.

13 THE WITNESS: Don't repeat the conversation?

14 THE COURT: No.

15 THE WITNESS: Okay.

16 THE COURT: You remember from law school? That's  
17 hearsay.

18 THE WITNESS: Okay.

19 THE COURT: Okay.

20 Q (BY MS. HILAIRE:) Okay. Based on your conversation  
21 with Mr. Castillo, did you become concerned about the  
22 suspensions?

23 A I did.

24 Q Okay. And did you take any steps to report your  
25 concerns to AAPS?

1           A           I -- I began discussions with other members about  
2     it, and I also talked with Betsy Schenck about it because I  
3     said under our current bylaws, if you suspended somebody, they  
4     lose their board certification. And if they lose their board  
5     certification, they're going to have to answer questions that  
6     relate to discipline in the organization.

7                   Every doctor is going to get -- every year when they  
8     renew their hospital privileges or their malpractice insurance  
9     or their medical license, there's going to be a question on the  
10    forms that you're sent: Have you ever been under any kind of  
11    suspension, discipline, or, you know, it may be worded  
12    differently, but the gist of those questions on those  
13    applications is, "Have you come under some form of disciplinary  
14    process?"

15                  And I said that that's -- that's very damaging to  
16    the career of a physician. And I said that if you've  
17    temporarily suspended these people, then there needs to be a  
18    really speedy resolution on the matter, otherwise these  
19    physicians are going to have their careers damaged.

20           Q           Okay. And also around the same time that you  
21    learned about the suspensions of Dr. Castillo, Geller, and  
22    Klein, had you also been made aware of other concerns about  
23    misconduct on the part of AAPS leadership?

24           A           Well, at that meeting I also found out that there  
25    had been an effort to pass an amendment to the bylaws in

1 December that would have increased the power of the Executive  
2 Committee delegating powers of the organization that had  
3 previously belonged only to the Board of Directors to just a  
4 handful of people that was on the Executive Committee.

5 And when I read a copy of the amendment -- I was  
6 shown a copy of the amendment that was -- was voted down in  
7 December -- I found it a little bit strange because I went and  
8 read Florida law about nonprofit corporations and I found out  
9 that most of the powers that were --

10 MR. SCHNEIDER: Objection, your Honor. He's not  
11 designated as an expert.

12 THE WITNESS: -- requested --

13 THE COURT: Overruled.

14 THE WITNESS: -- requested by that amendment were  
15 already vested in the Executive Committee anyway, and that in  
16 the 21st century there's no need to be able to act so quickly  
17 without the board's decisions because it's easy to get people  
18 together now and communicate on conference calls and so on. So  
19 it didn't make a lot of sense why it was being promulgated by  
20 the leadership.

21 Q (BY MS. HILAIRE:) Okay. And then at some point in  
22 time did you contact Ms. -- Dr. Stewart to discuss some of  
23 these concerns?

24 A Well, I did. I found out in addition to --

25 MR. SCHNEIDER: Objection. It's not responsive.

1 THE COURT: Sustained. The question calls for a yes  
2 or no answer.

3 THE WITNESS: Yes.

4 Q (BY MS. HILAIRE:) Okay. And what was the purpose  
5 of contacting Dr. Stewart?

6 A Well, I contacted Dr. Stewart because I had become  
7 aware of a number of things in addition to the Castillo,  
8 Geller, Klein matter and the Bylaws Amendment, another suit  
9 against the organization by a former employee, and a  
10 resignation of a member because of a conversation he said he  
11 had with Mr. Carbone. And it again came to my attention that  
12 they were again trying to pass the same amendment to expand the  
13 powers of the Executive Committee to act without the full  
14 Board.

15 And so I contacted -- I had been in communications  
16 with a number of people in my academy. I said this is, I  
17 think, a dangerous precedent for the organization, that we need  
18 to have more open discussions about these things and we need to  
19 get other academies involved.

20 And so another member in my academy suggested that I  
21 contact Dr. Stewart, that she was well known in the Dermatology  
22 Academy. So that's the reason I contacted her.

23 Q Okay. And to your knowledge, who -- which member of  
24 AAPS leadership was attempting to get the amendments cleared?

25 A Which -- which person in the leadership of AAPS was



1 trying --

2 Q Correct. Who was proposing these amendments?

3 A Well, I don't know the specifics of who actually  
4 proposed the amendment. When an amendment goes to the House of  
5 Delegates --

6 MR. SCHNEIDER: Objection. Nonresponsive.

7 THE COURT: All right. The question's been  
8 answered. Thank you.

9 Next question.

10 MS. HILAIRE: Thank you, your Honor. I'd like to  
11 show the witness Exhibit 1748.1.

12 (Exhibit 1748.1 previously marked for identification.)

13 MR. KRUSHKOV: I'm sorry. You said 1748.1?

14 MS. HILAIRE: 1748 on the labelling, but it's  
15 actually Bates stamp 1748.1.

16 MR. KRUSHKOV: Would it be possible for you to put  
17 it on the screen so we can make sure we have the right  
18 document?

19 MS. HILAIRE: You want it published before the jury  
20 now? Okay.

21 THE COURT: Yes. Go ahead.

22 MR. KRUSHKOV: Just want to see the first page.  
23 Okay. We understand which one it is. Thank you.

24 MS. HILAIRE: It's 1748 in your exhibit book.

25 Q (BY MS. HILAIRE:) Okay. Mr. -- I apologize.

1 Dr. Rice, do you know what this document is?

2 A This is a e-mail I sent to Tony Russo who is the  
3 president of AAPS, and it was in response to some other things  
4 that I have been working on. I had been testifying before the  
5 state medical boards, as I said earlier, for -- because the  
6 organization was being squeezed politically on state levels by  
7 the American Board of Medical Specialties who didn't want  
8 further competition recognized in the marketplace for  
9 certification by people who had certified with our  
10 organization, even though the exams were equivalent. And so  
11 that organization, being much larger, had a lot of money to  
12 spend to work against us politically. And so I was suggesting  
13 to the leadership that a better approach may be for our money  
14 to go for an antitrust suit because they kept trying to keep us  
15 from being recognized when we had clearly equivalent  
16 examinations.

17 And when I heard about the amendment trying to be  
18 passed again for the Executive Committee, I began calling  
19 people on the list of the House of Delegates explaining to them  
20 why I did not think the amendment should be passed.

21 And Dr. Russo thought that I was stabbing him in the  
22 back and hugging him at the same time, and that I'm trying to  
23 promote the organization on the outside but opposing his agenda  
24 on the inside, and so this letter is an explanation of all the  
25 things that I've learned since January and why I'm doing what

1 I'm doing, that I'm not opposing him, but I'm standing for the  
2 principle that we're a democratic organization and we need to  
3 follow due process and good procedure.

4 So, uhm -- so this letter is explaining my position  
5 and why I'm taking it and --

6 Q Dr. Rice, in this letter, do you oppose the issue  
7 with the amendments?

8 A Yes. I'm taking a strong stand against the  
9 expansion of power for the Executive Committee.

10 Q And do you also attach to this e-mail the Newby  
11 complaint?

12 A I did. I attached the Newby complaint and the  
13 Castillo, Geller, Klein complaint because I felt there may be  
14 people in the organization who did not know that the  
15 organization was under legal assault by the suspended members  
16 because by now what was only a suspension in January has now  
17 become a matter in litigation because I was told that AAPS  
18 never contacted the suspended doctors as they said they would.

19 Q Okay. And did you consider this open letter to be  
20 an open opposition to those three categories of concerns that  
21 you had?

22 A Yes.

23 Q And who did you address this open letter to?

24 A Well, I addressed it primarily to Tony Russo, the  
25 president. And when he had responded to me, he sent -- sent

1 out a -- sent out his response to my request that I present for  
2 consideration the antitrust thing. I wrote a 12-page letter,  
3 an open letter to them suggesting for the organization that we  
4 should pursue an antitrust suit for national recognition rather  
5 than working on a state-by-state basis.

6 And because I had made phone calls opposing the  
7 Executive Committee amendment, he said he was not going to fast  
8 track this or present it to the Board any more. And in his  
9 response to me, he included a lot of other people on the list.  
10 And so I included those people on the list and a number of  
11 other perhaps leaders I may have added -- I don't remember for  
12 sure at this point in time -- but I added maybe a few names to  
13 the list, but just sent it back to all the people that he had  
14 sent it to, my letter along with the two attached complaints so  
15 they would recognize that the organization --

16 Q Dr. Rice --

17 A -- now had several lawsuits.

18 Q -- I hate to interrupt. I've just been notified we  
19 have two minutes.

20 If you look for me at the middle of the page, it  
21 says, "Both the letter and the phone calls." Do you see that  
22 there in the document?

23 A Yes.

24 Q What are you referring to there about phone calls?

25 A Those are the phone calls I've been making to the

1 House of Delegates telling them please don't vote for the  
2 expansion of powers of the Executive Committee, that my reading  
3 of Florida law says, you know, it really wasn't necessary.

4 Q Okay. So you're vocally expressing your opposition  
5 in writing and verbally, correct?

6 A That's correct.

7 MS. HILAIRE: Your Honor, is this a good time to  
8 take a break?

9 THE COURT: Excellent time.

10 MS. HILAIRE: Thanks.

11 THE COURT: All right. Excellent.

12 All right. Ladies and gentlemen, we're going to take --  
13 this will probably be our last break -- 15 minutes. Remember  
14 the admonition, please.

15 THE COURTROOM DEPUTY: All rise.

16 (A recess was taken.)

17 (Open court out of the presence of the jury.)

18 THE COURT: Okay. Back on the record. Everyone is  
19 here other than the jury.

20 David Karns, I guess you've been told -- you've been  
21 advised that David Karns is having some discomfort in the heart  
22 region. He was instructed to go up to the nurse. That was  
23 about 15 minutes ago. Ms. English just went up there to check,  
24 see what the status is. She's not there. She has done the  
25 unforgivable: She has gone to lunch, and she will not be back

1 until 1:30.

2 David does not -- I'm sorry. David Karns does not feel  
3 comfortable enough to even drive until he sees the nurse, and I  
4 don't want anybody jeopardizing their health. I, too, would  
5 like him to see the nurse.

6 Should we sit here and -- what's your pleasure? We can  
7 let the jury go and start in the morning, or we can wait. I'm  
8 going to be here anyway, so...

9 MS. HILAIRE: Your Honor, considering that he will  
10 not be able to see the nurse until 1:30 and be checked out and  
11 we won't find anything close till 2, we probably should go to  
12 the next day.

13 MR. SCHNEIDER: I cannot disagree.

14 THE COURT: First time today, right?

15 MR. KRUSHKOV: Your Honor, at least second.

16 THE COURT: I think that's the right thing to do  
17 because we will not know and I'm certain that she's going to  
18 want to observe him for a while. And so we won't have an  
19 answer until this time to end the day anyway.

20 So, all right, we will adjourn for today. Ms. English  
21 will let --

22 MR. SCHNEIDER: I had the understanding from the  
23 plaintiff counsel that this was the only day that Dr. Rice  
24 could be here. So if it's all right with Dr. Rice to come back  
25 tomorrow, then I certainly agree with that.

1 MS. HILAIRE: Well, yes, Dr. Rice did want to be  
2 able to leave today, but he understands that if he had to stay,  
3 that he'd be willing to stay another day.

4 THE COURT: I want to leave it up to you.

5 THE WITNESS: Well, if -- if --

6 THE COURT: Wait a minute. He's a doctor.

7 MS. HILAIRE: We have a lot of doctors.

8 THE COURT: We've got lots of doctors. Why are we  
9 waiting on a nurse?

10 THE WITNESS: I'm happy to see the patient.

11 THE COURT: I was only kidding. I was only -- the  
12 question is -- and apparently I guess there was an  
13 understanding that you would only be available for today.

14 THE WITNESS: That is correct. I'm supposed to be  
15 at a conference tomorrow. But if -- if --

16 THE COURT: Where's the conference?

17 THE WITNESS: In South Carolina.

18 THE COURT: You're leaving America. Well, okay.

19 Has he been deposed?

20 MR. SCHNEIDER: No.

21 MS. HILAIRE: No. And that's my concern. I'm just  
22 not sure if we'd finish. Unless we'd want to go longer than  
23 2:00 today, I'm not sure if we'd complete him in any event if  
24 we're still taking a break. That's my problem.

25 MR. KRUSHKOV: What happens if the juror needs to go

1 to the hospital or whatever?

2 THE COURT: Then we will go with seven, you know?  
3 I didn't like eight. I didn't like eight at all. That's not  
4 enough cushion for a two-week trial.

5 MS. HILAIRE: Your Honor, that's why we'd like to  
6 see he's okay at least until tomorrow before we have to go to  
7 the decision to seven.

8 Can I talk to Dr. Rice? Thank you.

9 (Brief pause in the proceedings.)

10 THE COURT: Yes, ma'am.

11 MS. HILAIRE: So Dr. Rice is fine with resuming his  
12 testimony tomorrow.

13 THE COURT: Good man. Here's the deal. All these  
14 doctors, and apparently you as well, are saying we probably  
15 need to get him some medical attention now instead of waiting  
16 for a nurse, right?

17 THE WITNESS: I think so.

18 THE COURT: All right. What I'm going to do --  
19 let's everybody take at least ten. I'm going to run up there.

20 (A recess was taken.)

21 THE COURT: Is there anything we need to talk about  
22 other than I do want to get to the point?

23 MR. SCHNEIDER: I'm sorry.

24 THE COURT: You're pretty good. You cross with a  
25 purpose.



1 MR. SCHNEIDER: Thank you.

2 THE COURT: Then you sit your butt down. That's  
3 very good. That's what I want you to do tomorrow. But I am  
4 serious about this. I don't want us to waste his time. He's  
5 really doing us a favor.

6 MR. SCHNEIDER: Much appreciated, Dr.

7 THE COURT: Okay.

8 THE WITNESS: You're welcome.

9 THE COURT: It is appreciated. It really is. Okay.  
10 All right.

11 MR. KRUSHKOV: Both sides have agreed to try and  
12 give each other a heads-up in advance of what exhibits so we  
13 can prepare everything in advance. We hear you, your Honor.  
14 We want it to go faster, too.

15 THE COURT: I didn't make myself clear in the  
16 pretrials. If you do this, then I don't have to have all this  
17 mark it for -- none of that crap. I was trying to relieve you  
18 all of this. Just show it.

19 Now, if there's some good faith, honest-to-God objections  
20 with respect to what you tell them you're going to show  
21 tomorrow, I will deal with that as soon as we get in. You can  
22 get in the building at 7. I'll be here at 7. Okay?

23 MR. KRUSHKOV: Yes.

24 THE COURT: We can work out those kinds of things.

25 MR. KRUSHKOV: Excellent, your Honor. Thank you.

1 THE COURT: Like I'm --

2 MR. CONWELL: Your Honor, I've got an issue. I  
3 wanted to raise a question regarding the deposition.

4 THE COURT: Yes.

5 MR. CONWELL: So we've got our -- these video  
6 depositions ready to play to the jury based on the  
7 designations.

8 THE COURT: Okay.

9 MR. CONWELL: But they asserted some objections.  
10 Now, most of them are to relevancy.

11 THE COURT: The one I've seen are relevancy  
12 objections.

13 MR. CONWELL: Right. So the thing is we're not  
14 equipped to on-the-fly make changes to it. These are all --  
15 you know, a set -- you know, it's all created in a -- like a  
16 little movie and you just play it through, so --

17 THE COURT: I know. Here's the poor man's way of  
18 dealing with it, okay?

19 MR. CONWELL: Okay.

20 THE COURT: And we got the U.S. Attorney's Office  
21 and they can just make all kinds of magic happen in a  
22 heartbeat. But here's the deal. If there is a valid  
23 objection -- and many of those are to the questions -- but if  
24 there's a valid objection, then what we can do is just simply  
25 kill the sound --

1 MR. CONWELL: Okay.

2 THE COURT: -- play it through, kill the sound. Can  
3 we do that? And that doesn't take a whole lot of --

4 MR. KRUSHKOV: Is that possible technologically?

5 MR. CONWELL: Yeah.

6 MS. ROSSETTI: Then when are we determining whether  
7 the question's valid or not?

8 MR. SCHNEIDER: The Court's going to have the  
9 transcript.

10 THE COURT: I'm going to tell you. You tell me what  
11 it is you're going to play, I can look at those. What I did  
12 was I just went in order.

13 MR. CONWELL: All right. So, your Honor, we told  
14 them yesterday the ones we were going to play, first ones that  
15 are up, and I can give that list to the Court.

16 THE COURT: Okay. Well, I've got what you filed and  
17 I just finished going through Okerblom, John Okerblom. I  
18 couldn't find Betty Schenck.

19 MR. SCHNEIDER: Are you talking about original  
20 transcripts?

21 THE COURT: Oh, no, no. Yeah --

22 MR. SCHNEIDER: We lodged a number today.

23 THE COURT: -- I did see some, but, all right. Just  
24 tell me -- tell me.

25 MS. ROSSETTI: Your Honor, Dr. Betsy Schenck, I

1 believe it is, is right here. This is Betsy --

2 THE COURT: This is Betsy.

3 MS. ROSSETTI: Yeah. Is it Schenck or Schenck?

4 MR. KRUSHKOV: Schenck.

5 THE COURT: S-c-h-e-n-c-k.

6 THE WITNESS: She pronounces it Schenck.

7 MR. KRUSHKOV: She pronounces it Schenck.

8 THE WITNESS: But most people say it --

9 THE COURT: She's got a choice and she picked  
10 Schenck.

11 MR. KRUSHKOV: That is the case, your Honor.

12 THE COURT: Keep my mouth shut? All right.

13 MS. ROSSETTI: It's right here, yeah.

14 THE COURT: All right. But what I'm really  
15 interested in is you guys.

16 MR. CONWELL: So the ones we're going to call are in  
17 this order of play: Cassandra Newby, Anthony Russo,  
18 Dr. Lemonick, and Dr. Schenck.

19 THE COURT: Betsy.

20 MR. CONWELL: Yes, Betsy Schenck, and then  
21 Dr. Wilkens.

22 THE COURT: Now, that is all tomorrow, right?

23 MR. CONWELL: That's all for tomorrow, yes.

24 THE COURT: I got things to do tonight. All right.  
25 Okay.

1 MR. CONWELL: We're also -- we're also going to play  
2 tomorrow, if we have time, portions of Carbone and Cerrato.

3 THE COURT: Okay. All right. I'll get on it.

4 MR. CONWELL: All right. Thank you.

5 MR. KRUSHKOV: Thank you, your Honor.

6 (Proceedings adjourned at 1:29 P.M., until  
7 Thursday, January 28, 2016, at 8:00 A.M.)

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